

---

---

# Delaware Register of Regulations

---

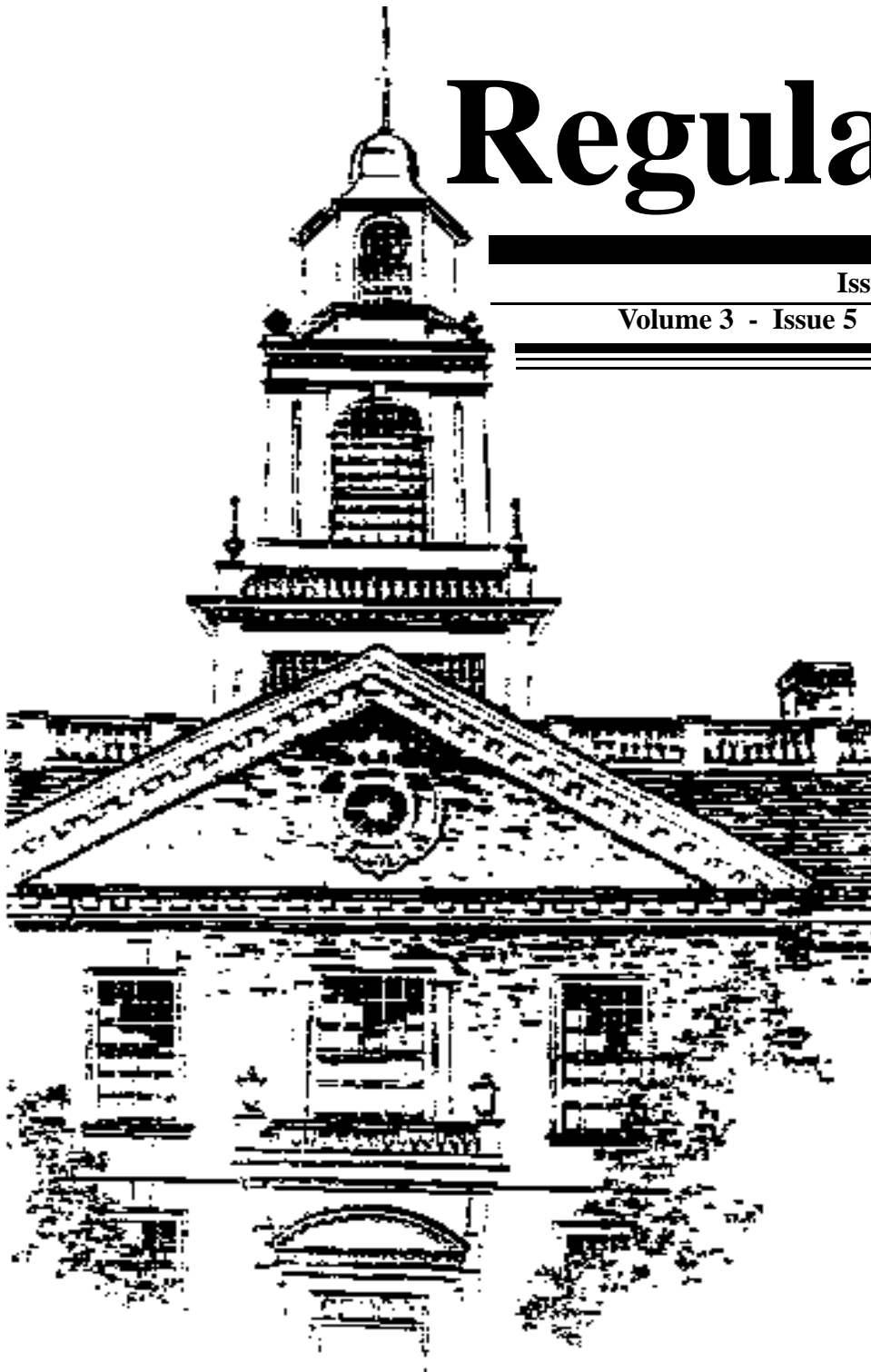
Issue Date: November 1, 1999

Volume 3 - Issue 5

Pages 562 - 676

---

---



## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before October 15, 1999.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

563

## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

---

---

### CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

2 **DE Reg.** 1000 - 1010 (12/1/98)

Refers to Volume 2, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

---

---

### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

---

## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

---

ISSUE DATE	CLOSING DATE	CLOSING TIME
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.

---

### DIVISION OF RESEARCH STAFF:

**William S. Montgomery**, Director, Division of Research; **Walter G. Feindt**, Deputy Director; **Kathleen K. Amalfitano**, Secretary; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Administrative Assistant; **Barbara Ryan**, Public Information Clerk; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

Cumulative Tables..... 567

**PROPOSED**

**DEPARTMENT OF ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION**

Voluntary Treatment Option for Chemically  
Dependent or Impaired Professionals..... 571  
Board of Cosmetology and Barbering..... 573  
Board of Examiners of Psychologists..... 576

**DEPARTMENT OF EDUCATION**

Delaware Student Testing Program..... 582  
School Transportation..... 588

**DEPARTMENT OF FINANCE**

Administration of the Education Expense and  
Property Tax Relief Fund..... 597

**DIVISION OF REVENUE  
STATE LOTTERY OFFICE**

Non-Discrimination on the Basis of Disability  
in Delaware Lottery Programs, Rule 29..... 600

**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**

Conrad State 20 / J-1 Visa Waiver Program..... 603

**DIVISION OF SOCIAL SERVICES**

DSSM Section 13444 Qualified Medicare  
Beneficiaries (QMB)..... 616  
DSSM Section 13445, Specified Low Income  
Medicare Beneficiaries (SLMB)..... 616  
DSSM Section 13447, Qualifying Individuals..... 616  
DSSM Section 17300, Qualified Medicare  
Beneficiaries..... 616  
DSSM Section 17300.3.2.5, Unearned Income.... 616  
DSSM Section 17300.3.3, Resources..... 616  
DSSM Section 17300.3.3.1, Excluded  
Resources..... 616  
DSSM Section 15430, Adoption Subsidy  
Children..... 617  
DSSM Section 18700.5, Cancellation of Coverage  
for Nonpayment of Premiums..... 617  
Durable Medical Equipment Provider Manual,  
Nutrition Therapy..... 618  
General Policy Manual, Delaware Prescription

Assistance Program (DPAP)..... 620  
Practitioner Provider Manual, Pharmacy Services ..... 620  
Pharmacy Manual, Drug Rebate Programs..... 621

**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Regulation 36 - Acid Rain Program..... 621

**DIVISION OF FISH AND WILDLIFE**

S-52 Requirement for Collecting Horseshoe Crabs  
for Persons Under 16..... 622  
S-53 Number of Persons Accompanying a  
Person with a Valid Horseshoe Crab Collecting  
Permit..... 623  
S-54 Possession Limit of Horseshoe Crabs,  
Exceptions..... 623  
S-58 Horseshoe Crab Containment and  
Transportation Restrictions..... 623  
S-61 Collecting Horseshoe Crabs at Night,  
Prohibited..... 623

**DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

Rule 76, A Rule Governing Taxes Paid On Spirits ..... 624

**DEPARTMENT OF TRANSPORTATION**

Subdivision Streets, Mobility Friendly Design  
Standards..... 624

**FINAL**

**DEPARTMENT OF EDUCATION**

Military Leave, Credit for Service in the  
Armed Forces..... 630  
Deferred Compensation, Repeal..... 633  
Payment of Teachers in Summer Programs in Vocational-  
Technical School Districts, Repeal..... 633  
State Salary Increase Adjustments for Changed Status,  
Repeal ..... 633  
Payment Schedules for Contractual Programs/Inservice  
Education, Repeal..... 633

**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

DSSM Section 144330.2, Eligibility for State  
Funded Benefits (Nonqualified Aliens)..... 634

# TABLE OF CONTENTS

Eligibility Manual, A Better Chance, Delaware TANF Plan.....	634
---	-----

## DEPARTMENT OF INSURANCE

Reg. 82, Standards of Payment for Multiple Surgical Procedures.....	636
Reg. 83, Standards of Payment for Assistants at Surgery.....	638

## DEPARTMENT OF LABOR

### DIVISION OF EMPLOYMENT AND TRAINING COUNCIL ON APPRENTICESHIP AND TRAINING

Apprenticeship and Training Rules & Regulations.....	641
--	-----

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

Total Maximum Daily Load (TMDL) Regulation for Zinc in the White Clay Creek.....	650
---	-----

## DIVISION OF FISH AND WILDLIFE

S-55-A, Horseshoe Crab Dredge Permit Lottery..	652
--	-----

## DEPARTMENT OF STATE

### OFFICE OF THE STATE BANKING COMMISSIONER

Regulation No.: 5.2112.0001, Mortgage Loan Brokers Operating Regulations.....	654
Regulation No.: 5.2111(a).0002, Mortgage Loan Brokers Minimum Requirements for Content of Books & Records.....	655
Regulation No. 5.2115.0003, Mortgage Loan Broker Regulations Itemized Schedule of Charges... ..	656
Regulation No.: 5.2113.0004, Mortgage Loan Brokers Minimum Disclosure Requirements .....	657
Regulation No.: 5.2111(b).0005, Report of Delaware Loan Volume.....	657
Regulation No.: 5.2213.0002, Licensed Lenders Minimum Requirements for Content of Books & Records.....	658
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Charges... ..	659
Regulation No.: 5.2210(e).0005, Report of Delaware Loan Volume.....	662
Regulation No.: 5.2318.0001, Report of Delaware Sale of Checks, Drafts & Money Orders Volume.....	662
Regulation No.: 5.2906(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum	

Requirements for Content of Books & Records... ..	663
Regulation No.: 5.2906(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations... ..	664
Regulation No.: 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts.....	665
Regulation No.: 5.3404/3409.0001, Preneed Funeral Contracts Regulations Governing Revocable & Irrevocable Trust Agreements.....	666

## GOVERNOR

Executive Order No. 67, Proclamation of State of Emergency Due to Hurricane.....	667
Executive Order No. 68, Termination of Drought Warning and Other Related Action.....	667
Executive Order No. 69, Amendment to Executive Order Number Twenty-Seven as Amended by Executive Order Number Fifty-Six Regarding the Creation of the Violence Against Women Act Implementation Committee.....	668
Appointments.....	669

## CALENDAR OF EVENTS/HEARING NOTICES

Div. of Professional Regulation, Voluntary Treatment Option for Chemically Dependent or Impaired Professionals, Notice of Public Hearing.....	672
Board of Cosmetology & Barbering, Notice of Public Hearing.....	672
Board of Examiners of Psychologists, Notice of Public Hearing.....	672
Dept. of Education, Notice of Monthly Meeting..	673
Dept. of Finance, Administration of the Education Expense and Property Tax Relief Fund, Notice of Public Hearing.....	673
Lottery Office, Notice of Public Comment Period .....	673
Div. of Public Health, Conrad State 20 / J-1 Visa Waiver Program, Notice of Public Hearing... ..	674
Div. of Social Service, Notice of Public Comment Period .....	674
DNREC, Regulation 36 - Acid Rain Program Notice of Public Hearing.....	674
DNREC, Horseshoe Crabs, Notice of Public Hearing .....	675
Div. of ABCC, Rule 76, Notice of Public Hearing .....	676
DeIDOT, Subdivision Streets, Mobility Friendly Design Standards, Notice of Public Hearing..	676

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

**Delaware State Fire Prevention Commission**

BLS Ambulance Provider/First Responder.....	3 <b>DE Reg.</b> 122 (Prop.)
Standard for the Marking, Identification and Accessibility of Fire Lanes, Exits, Fire Hydrants, Sprinkler and Standpipe Connections.....	3 <b>DE Reg.</b> 97 (Final)
NFPA Fire Codes & Standards, Incorporation by Reference.....	3 <b>DE Reg.</b> 416 (Final)

**Department of Administrative Services**

**Division of Professional Regulation**

Board of Electrical Examiners.....	3 <b>DE Reg.</b> 522 (Final)
Board of Examiners of Nursing Home Administrators .....	3 <b>DE Reg.</b> 486 (Prop.)
<b>Board of Pharmacy</b>	
Regulation V(A)(7) & V(D)(3)(c), Dispensing.....	3 <b>DE Reg.</b> 8 (Prop.)
	3 <b>DE Reg.</b> 431 (Final)
Regulation VI- D, Pure Drug Regulations.....	3 <b>DE Reg.</b> 8 (Prop.)
Regulation XIV - Administration of Injectable Medications.....	3 <b>DE Reg.</b> 8 (Prop.)
Merit Employee Relations Board, Chapter 20, Grievance Procedure.....	3 <b>DE Reg.</b> 167 (Final)

**Department of Agriculture**

Farmland Preservation Program.....	3 <b>DE Reg.</b> 170 (Final)
<b>Harness Racing Commission</b>	
Preference Dates, Chapter VII, Rule I-F.....	3 <b>DE Reg.</b> 432 (Final)
Overnight Events, Chapter VI, Rule II-A-5.....	3 <b>DE Reg.</b> 432 (Final)
<b>Thoroughbred Racing Commission</b>	
Bleeders, Rule 10.04.....	3 <b>DE Reg.</b> 360 (Prop.)
Bleeder Medication, Rule 15.02.....	3 <b>DE Reg.</b> 360 (Prop.)

**Department of Education**

Child Nutrition .....	3 <b>DE Reg.</b> 10 (Prop.)
Deferred Compensation, .....	3 <b>DE Reg.</b> 524 (Final)
DSSAA Constitution & Bylaws, 29 amendments.....	3 <b>DE Reg.</b> 363 (Rep.)
DSSAA Constitution & Bylaws, 29 amendments.....	3 <b>DE Reg.</b> 435 (Final)
DSSAA Constitution & Bylaws, Rule 1 & 33.....	3 <b>DE Reg.</b> 11 (Prop.)
Health Examinations for School District Employees.....	3 <b>DE Reg.</b> 525 (Final)
	3 <b>DE Reg.</b> 13 (Prop.)
Maternity Leave, Repeal.....	3 <b>DE Reg.</b> 526 (Final)
Military Leave, Credit for Service in the Armed Forces.....	3 <b>DE Reg.</b> 527 (Rep.)
Payment of Personnel under Various Programs.....	3 <b>DE Reg.</b> 361 (Prop.)
Payment of Teachers in Summer Programs in Vocational-Technical School Districts.....	3 <b>DE Reg.</b> 492 (Prop.)
Payment Schedules for Contractual Programs/In-Service Education.....	3 <b>DE Reg.</b> 492 (Prop.)
Recruiting & Training of Professional Educators for Critical Curricular Areas.....	3 <b>DE Reg.</b> 363 (Rep.)
Regulation for Charter Schools - Admission, Repeal.....	3 <b>DE Reg.</b> 363 (Rep.)
School Crisis Response Plans.....	3 <b>DE Reg.</b> 100 (Final)
School Health Tuberculosis (Tb) Control Program.....	3 <b>DE Reg.</b> 492 (Rep.)
School Safety Audit.....	3 <b>DE Reg.</b> 526 (Final)
State Salary Increase Adjustments for Changed Status.....	3 <b>DE Reg.</b> 527 (Rep.)
	3 <b>DE Reg.</b> 361 (Prop.)
	3 <b>DE Reg.</b> 492 (Prop.)
	3 <b>DE Reg.</b> 492 (Prop.)
	3 <b>DE Reg.</b> 363 (Rep.)
	3 <b>DE Reg.</b> 363 (Rep.)
	3 <b>DE Reg.</b> 363 (Rep.)
	3 <b>DE Reg.</b> 433 (Final)
	3 <b>DE Reg.</b> 433 (Final)
	3 <b>DE Reg.</b> 440 (Final)
	3 <b>DE Reg.</b> 440 (Final)
	3 <b>DE Reg.</b> 433 (Final)
	3 <b>DE Reg.</b> 363 (Rep.)

Student Testing Program.....	3	<b>DE Reg.</b> 364 (Prop.)
Teacher of the Year Award.....	3	<b>DE Reg.</b> 104 (Final)
Department of Finance		
Division of Revenue		
State Lottery Office		
Payment of Prizes, Powerball Game, Rule 23.....	3	<b>DE Reg.</b> 126 (Prop.)
		3 <b>DE Reg.</b> 523 (Final)
Department of Health & Social Services		
Division of Public Health		
Delaware Trauma System Rules & Regulations.....	3	<b>DE Reg.</b> 14 (Prop.)
		3 <b>DE Reg.</b> 442 (Final)
Metabolic Disorders & Establishment of Case Review Committee,		
Regulations Defining.....	3	<b>DE Reg.</b> 529 (Final)
State of Delaware Food Code.....	3	<b>DE Reg.</b> 495 (Prop.)
Office of Drinking Water		
Regulations Governing Public Drinking Water Systems.....	3	<b>DE Reg.</b> 197 (Final)
Division of Social Services		
DSSM Sec. 2023, Program Violations.....	3	<b>DE Reg.</b> 287 (Final)
DSSM Sec. 3002, Time Limit, Temporary Welfare Program.....	3	<b>DE Reg.</b> 369 (Prop.)
DSSM Sec. 3002, Time Limit, Temporary Welfare Program, Withdraw of.....	3	<b>DE Reg.</b> 443 (Final)
DSSM Sec. 3002, Exceptions to the Time Limit Counter.....	3	<b>DE Reg.</b> 443 (Prop.)
DSSM Sec. 3031, Work for your Welfare.....	3	<b>DE Reg.</b> 371 (Prop.)
DSSM Sec. 3032, Diversion Assistance.....	3	<b>DE Reg.</b> 444 (Final)
DSSM Sec. 9059, Income Exclusions.....	3	<b>DE Reg.</b> 287 (Final)
DSSM Sec. 11003.7, Income Limits & Determination of Fees.....	3	<b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11003.7.2, Income Limits & Determination of Fees.....	3	<b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11003.7.7, Income Limits & Determination of Fees.....	3	<b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11004.3, Income Limits & Determination of Fees.....	3	<b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11004.7, Determination of Child Care Fee.....	3	<b>DE Reg.</b> 42 (Prop.)
		3 <b>DE Reg.</b> 444 (Final)
		3 <b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11004.7.1, Income Limits & Determination of Fees	3	<b>DE Reg.</b> 497 (Prop.)
DSSM Sec. 11004.7.11, Income Limits & Determination of Fees.....	3	<b>DE Reg.</b> 497 (Prop.)
Eligibility Manual, 15400, Income.....	3	<b>DE Reg.</b> 107 (Final)
Eligibility Manual, 16240, Composition of Budget Unit.....	3	<b>DE Reg.</b> 107 (Final)
General Policy Manual .....	3	<b>DE Reg.</b> 277 (Final)
General Policy Manual, Eligibility for DHCP .....	3	<b>DE Reg.</b> 497 (Prop.)
Home Health Provider Manual, Assisted Living Medicaid Waiver Program.....	3	<b>DE Reg.</b> 374 (Prop.)
Independent Laboratory Provider Manual.....	3	<b>DE Reg.</b> 127 (Prop.)
		3 <b>DE Reg.</b> 531 (Final)
Pharmacy Provider Manual, Drugs Used for Cosmetic Purposes.....	3	<b>DE Reg.</b> 375 (Prop.)
Practitioner Manual.....	3	<b>DE Reg.</b> 277 (Final)
Private Duty Nursing, HCBS Waiver and Assisted Living Manual.....	3	<b>DE Reg.</b> 278 (Final)
Department of Insurance		
Regulation 56, Life & Health Submissions Regarding Acquired Immunodeficiency		
Syndrome (AIDS).....	3	<b>DE Reg.</b> 288 (Final)
Department of Labor		
Division of Employment & Training		
Apprenticeship & Training Rules & Regulations.....	3	<b>DE Reg.</b> 42 (Prop.)

Department of Natural Resources & Environmental Control

Division of Air & Waste Management

Air Quality Management Section

Delaware On-Road Mobile Source Emissions Budgets for the Delaware, Phase II

Attainment Demonstration.....	3 <b>DE Reg.</b> 127 (Prop.)
Reg. No. 37, NOx Budget Program.....	3 <b>DE Reg.</b> 376 (Prop.)
Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart A.....	3 <b>DE Reg.</b> 51 (Prop.) 3 <b>DE Reg.</b> 445 (Final)
Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart N.....	3 <b>DE Reg.</b> 59 (Prop.) 3 <b>DE Reg.</b> 445 (Final)
Reg. No. 39, NOx Budget Trading Program.....	3 <b>DE Reg.</b> 129 (Prop.)
Reg. No. 40, Delaware's National Low Emissions Vehicle Program.....	3 <b>DE Reg.</b> 532 (Final)
2002 Rate-of-Progress Plan for Kent & New Castle Counties.....	3 <b>DE Reg.</b> 65 (Prop.)

Waste Management Section

Regulations Governing Hazardous Waste .....	3 <b>DE Reg.</b> 534 (Final)
---	------------------------------

Division of Fish & Wildlife

Wildlife & Non-Tidal Fishing Regulations.....	3 <b>DE Reg.</b> 289 (Final)
---	------------------------------

Division of Water Resources

Land Treatment of Wastes.....	3 <b>DE Reg.</b> 445 (Final)
Surface Water Quality Standards .....	3 <b>DE Reg.</b> 311 (Final)
Total Maximum Daily Load (TMDL) Regulation for zinc in the Red Clay Creek.....	3 <b>DE Reg.</b> 163 (Prop.)
Total Maximum Daily Load (TMDL) Regulation for zinc in the White Clay Creek....	3 <b>DE Reg.</b> 164 (Prop.)

Department of State

Office of the State Banking Commissioner

Regulation No.: 5.1101etal.0002, Instructions for Preparation of Franchise Tax .....	3 <b>DE Reg.</b> 512 (Prop.)
Regulation No.: 5.1101etal.0005, Instructions for Preparation of Franchise Tax for Federal Savings Banks not Headquartered in this State but Maintaining Branches in this State.....	3 <b>DE Reg.</b> 515 (Prop.)
Regulation No.: 5.1101etal.0009, Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	3 <b>DE Reg.</b> 517 (Prop.)
Regulation No.: 5.2112.0001, Mortgage Loan Brokers Operating Regulations.....	3 <b>DE Reg.</b> 403 (Prop.)
Regulation No.: 5.2111(a).0002, Mortgage Loan Brokers Minimum Requirements for Content of Books & Records.....	3 <b>DE Reg.</b> 404 (Prop.)
Regulation No. 5.2115.0003, Mortgage Loan Broker Regulations Itemized Schedule of Charges.....	3 <b>DE Reg.</b> 405 (Prop.)
Regulation No.: 5.2113.0004, Mortgage Loan Brokers Minimum Disclosure Requirements .....	3 <b>DE Reg.</b> 406 (Prop.)
Regulation No.: 5.2111(b).0005, Report of Delaware Loan Volume.....	3 <b>DE Reg.</b> 406 (Prop.)
Regulation No.: 5.2213.0002, Licensed Lenders Minimum Requirements for Content of Books & Records.....	3 <b>DE Reg.</b> 407 (Prop.)
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Charges.....	3 <b>DE Reg.</b> 408 (Prop.)
Regulation No.: 5.2210(e).0005, Report of Delaware Loan Volume.....	3 <b>DE Reg.</b> 411 (Prop.)
Regulation No.: 5.2318.0001, Report of Delaware Sale of Checks, Drafts & Money Orders Volume.....	3 <b>DE Reg.</b> 411 (Prop.)
Regulation No.: 5.2906(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books & Records.....	3 <b>DE Reg.</b> 412 (Prop.)
Regulation No.: 5.2906(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations.....	3 <b>DE Reg.</b> 413 (Prop.)
Regulation No.: 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts.....	3 <b>DE Reg.</b> 414 (Prop.)



Regulation No.: 5.3404/3409.0001, Preneed Funeral Contracts Regulations Governing  
 Revocable & Irrevocable Trust Agreements.....3 **DE Reg.** 415 (Prop.)

### Governor's Office

Executive Order No. 61, Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Items.....	3 <b>DE Reg.</b> 453
Executive Order No. 62, Proclamation of State of Emergency Due to Drought Emergency; Issuing an Emergency Order Imposing Mandatory Related Action.....	3 <b>DE Reg.</b> 454
Executive Order No. 63, Amendment to Executive Order No. 62 Regarding the State of Emergency due to Drought Emergency.....	3 <b>DE Reg.</b> 546
Executive Order No. 64, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63, Regarding the State of Emergency due to Drought Emergency.....	3 <b>DE Reg.</b> 546
Executive Order No. 65, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63 and Exec. Order No. 64; Regarding the State of Emergency due to Drought Emergency.....	3 <b>DE Reg.</b> 547
Executive Order No. 66, Termination of State of Emergency Due to Drought; Repeal of Mandatory Water Conservation Measures; Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Action.....	3 <b>DE Reg.</b> 550
Appointments & Nominations.....	3 <b>DE Reg.</b> 111
	3 <b>DE Reg.</b> 341
	3 <b>DE Reg.</b> 457
	3 <b>DE Reg.</b> 552

### Public Service Commission

Reg. Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service .....	3 <b>DE Reg.</b> 538 (Final)
---	------------------------------

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES**  
**DIVISION OF PROFESSIONAL REGULATION**

**PUBLIC HEARING NOTICE**

The following Boards and Commissions under the Division of Professional Regulation propose to hold a joint public hearing pursuant to 29 **Del.C.** §10111:

- Board of Electrical Examiners
- Real Estate Commission
- Board of Accountancy
- Board of Professional Land Surveyors
- Board of Architects
- Board of Chiropractic
- Board of Cosmetology and Barbering
- Board of Dental Examiners
- Board of Nursing,
- Board of Examiners in Optometry
- Board of Plumbing Examiners
- Examining Board of Physical Therapists
- Board of Podiatry
- Council on Real Estate Appraisers
- Board of Landscape Architecture
- Board of Examiners of Psychologists
- Board of Funeral Services
- Board of Veterinary Medicine
- Board of Examiners of Nursing Home Administrators

- Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
- Board of Clinical Social Work Examiners
- Board of Professional Counselors of Mental Health
- Board of Occupational Therapy Practice,
- Board of Massage and Bodywork,
- Committee of Dietetics/Nutrition.

The purpose of the hearing is to adopt regulations pertaining to the Voluntary Treatment Option for Chemically Dependent or Impaired Professionals in accordance with 29 **Del.C.** §8807(n). The public may obtain copies of the proposed regulations from the Division of Professional Regulation c/o Denise Spear, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904 (302)739-4522 ext. 202. A public hearing will be held on December 1, 1999 at 1:00 p.m. in conference room A, second floor of the Cannon Building, 861 Silver Lake Blvd., Dover, DE. The Division will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Denise Spear at the above address. Final date to submit written comments shall be at the above scheduled public hearing.

**29 Del.C. §8807**

(n) Unless otherwise provided by law, any Board within the Division of Professional Regulation may adopt through its rules and regulations the Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

for the treatment of chemically dependent or impaired persons regulated by such Board. The Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall be available to a regulated professional of a participating Board, provided the regulated professional has not committed any offense, other than the status of being chemically dependent or impaired, which otherwise constitutes a ground for discipline under applicable laws governing the regulated professional. The participating Board may defer and ultimately take no disciplinary action with regard to an eligible chemically dependent or impaired regulated professional who voluntarily signs an agreement, in a form satisfactory to the participating Board, agreeing to the terms and conditions specified in the Voluntary Treatment Option. The Board, where it deems appropriate, may proceed with disciplinary action with regard to a disciplinary offense alleged to have occurred prior to the professional's entry into the Voluntary Treatment Option. Any person regulated by a participating Board may refer himself/herself into this Voluntary Treatment Option. Any member of the public, or member of the participating professions regulated by the Division of Professional Regulation, may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by a participating Board within the Division of Professional Regulation to the appropriate Board chairperson, her or his designate, or designates, or directly to the Director of the Division of Professional Regulation or his/her designate. Failure to provide such a report may be considered grounds for disciplinary action against a regulated professional so failing to report, if such grounds for disciplinary action are provided in the participating Board's statutes, rules or regulations. When a report is received indicating that a regulated professional of a participating Board may be chemically dependent or impaired, the Boards or Commissions subject to this Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall follow the following procedures:

(1) If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

(2) The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

(3) In order for the individual to participate in the

Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

(4) A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

(5) Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

(6) The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

a. Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

b. Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's

designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

c. Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

d. Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

e. Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

f. Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

(7) The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

(8) The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

(9) If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

(10) Failure to enter into such agreement or to

comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

(11) Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

(12) Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

---

### **BOARD OF COSMETOLOGY & BARBERING**

Statutory Authority: 24 Delaware Code,  
Section 5106(14) (24 Del.C. 5106(14))

The Delaware Board of Cosmetology and Barbering proposes to adopt a new regulation, pursuant to 24 Del.C. §5106(14) and 29 Del.C. Ch. 101. The purpose of the proposed new regulation is to prohibit the use of methyl methacrylate (MMA) in the practice of cosmetology, nail technology and related professions.

A public hearing on the proposed regulation will be held on Monday, November 29, 1999 at 9:30 a.m., in Conference Room A, Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested people on the proposed new regulation. Oral comments will be received at the public hearing. Written comments must be submitted by December 1, 1999 and should be directed to the Board at its offices at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467.

Anyone wishing to make oral comments or to obtain a copy of the proposed regulation should contact Sheila Wolfe, Administrative Assistant to the Board, by calling (302) 739-4522 x 218.

#### **Delaware Board of Cosmetology and Barbering**

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology

- 4.0 Instructor Requirements
- 5.0 Reciprocity Requirements
- 6.0 Equipment for Cosmetology and Barbering Schools
- 7.0 Equipment for Nail Technology Schools
- 8.0 Equipment for Electrology Schools
- 9.0 Course outline for Aesthetician
- 10.0 Equipment for Aesthetics Schools
- 11.0 Registration of Salons and Schools
- 12.0 Apprenticeship and Supervision
- 13.0 Transfer of Nail Technician Hours to Cosmetology Programs
- 14.0 Licensure Requirements
- 15.0 Foreign Diplomas
- 16.0 Health and Sanitation: Electric Nail Files and Laser Technology

#### 1.0 Demonstrations

1.1 Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 Del.C. 5103 (1))

#### 2.0 Temporary Work Permits

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 Del.C. 5106 (7)

#### 3.0 Instructor Curriculum for Barbering and Cosmetology

3.1 Course Outline - Instructor 500 Hours	
Subject Matter	Minimum Clock Hours
Orientation	50
Practical Laboratory Management	200
Classroom Teaching and Management	200
Theory and Testing	50
3.2 Course Outline - Instructor 250 Hours	
Subject Matter	Minimum Clock Hours
Orientation	25
Practical Laboratory Management	100
Classroom Teaching and Management	100
Theory and Testing	25

(24 Del.C. Subsection 5106(13))

#### 4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. 5106 (13)).

#### 5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent requirements than Delaware, would be required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application.

Reference Section 2 for temporary work permit. (24 Del.C. 5109(a))

#### 6.0 Equipment for Cosmetology and Barbering Schools

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).
- 6.1.5 (4) Wet sterilizers (sanitizers).
- 6.1.6 (6) Dozen permanent wave rods.
- 6.1.7 (2) Reclining chair with headrest.
- 6.1.8 (1) Mannequin per student.
- 6.1.9 (12) Work Stations.

- 6.1.10 Mirrors and chairs.
  - 6.1.11 (1) Locker for each student.
  - 6.1.12 (4) Closed containers for soiled linen.
  - 6.1.13 (3) Closed waste containers.
  - 6.1.14 (1) Container for sterile solution for each manicure table.
  - 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
  - 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
  - 6.1.17 (1) Cabinet for towels.
  - 6.1.18 An arm chair or usable table and chair for each student in the theory room.
  - 6.1.19 (3) Timer clocks.
  - 6.1.20 Attendance records.
  - 6.1.21 (1) Soap machine.
  - 6.1.22 (1) Textbook for each student.
- (24 Del.C. 5117 (a))

#### 7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.
- 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 7.1.12 Attendance Records.
- 7.1.13 Reception Desk.
- 7.1.14 Proper Ventilation.
- 7.1.15 (4) Dry Sterilizers.
- 7.1.16 (4) Wet Sterilizers.
- 7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del C. Subsection 5117 (a))

#### 8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.
- 8.1.2 (1) All purpose chair or lounge.
- 8.1.3 (1) Magnifying lamp (wall mounted or on a

- stand). 8.1.4 (1) Tweezers for each student.
- 8.1.5 (1) Movable table for the epilator.
- 8.1.6 (1) Adjustable stool on wheels.
- 8.1.7 All needles used for treatment must be disposable type only.
- 8.1.8 Sterilizing materials and rubber gloves.
- 8.1.9 (1) Textbook for each student.

#### 9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 Del.C. 5132(a))

#### 10.0 Equipment for Aesthetics Schools

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.
- 10.1.2 (1) All purpose chair or lounge.
- 10.1.3 (1) Magnifying lamp (wall mounted or on a stand).
- 10.1.4 (1) Adjustable stool on wheels.
- 10.1.5 Sterilizing materials and rubber gloves.
- 10.1.6 (1) Textbook for each student.

(24 Del.C. 5130(a))

Above Rules and Regulations effective on 8/29/94

#### 11.0 Registration of Salons and Schools

11.1 A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. 5117)

Section 11 effective on 12/28/94

#### 12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. 5107)

#### 13.0 Transfer of Nail Technician Hours to Cosmetology Programs

13.1 Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 Del.C. 5107)

Section 12 and 13 effective October 30, 1996

#### 14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 Del. C § 5113(a)(b). (24 Del.C. 5103)

#### 15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

#### 16.0 Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under section 5113 of Title 24 Del. C. (24Del C. 5100, 5101(4), 5112 and 5113)

---

### **BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,  
Section 3506(a)(1) (24 Del.C. 3506(a)(1))

#### **NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to adopt a new Rule and Regulation. The proposed revision to the rules and regulations will change Section 5 by requiring candidates to submit all application materials to the Board for its review prior to the candidate sitting for the examination.

A public hearing will be held on the proposed Rule and Regulation on December 6, 1999 at 10:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested persons on the proposed rule and regulation, and individuals are urged to submit their comments in writing. Anyone wishing to obtain a copy of the proposed regulation, or to make comments at the public hearing, should contact the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or write to the Delaware Board of Examiners of Psychologists, P. O. Box 1401, Cannon Building, Suite 203, Dover, DE 19903.

### **Board of Examiners of Psychologists**

#### **1.0 General Rules and Regulations**

The Board of Examiners of Psychologists has been established under the 24 **Del.C.** Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

#### **2.0 Official Board Office**

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

#### **3.0 Meetings of the Board**

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

#### **4.0 Officers of the Board**

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the

Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

#### **5.0 Procedures for Licensure**

##### **5.1 Application - Initial Licensure**

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** 3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** 3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 **Del.C.** 3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form



must be submitted before any further action can be taken.

## 5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 **Del.C.** 3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP) by achieving the passing score, as required by their state of original licensure.

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

## 6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 **Del.C.** 3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

### 7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under Section 3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients

including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

### 8.0 Failure to Pass Examination

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

### 9.0 Psychological Assistants

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description

delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 Del.C. 3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this

substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement

because of concerns about the ethical or professional behavior of the psychological assistant.

#### 10.0 Continuing Education

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances,

hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of

professional organizations; business management or office administration courses; group supervision; or case conferences.

#### 11.0 Professional Conduct

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 **Del.C.** 3514.

#### 12.0 Complaint Procedures

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 **Del.C.** 8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Chapter 101.

12.2 Complaints must be filed, in writing, with the Division of Professional Regulation.

#### 13.0 License Renewal

Renewal notices will be mailed in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. Continuing education requirements must be fulfilled as detailed in Section 10 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. Should any psychologist fail to renew and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

#### 14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** 3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have

completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** 3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7 of the Rules and Regulations.

---

## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** 122(d))

### **EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)**

#### **DELAWARE STUDENT TESTING PROGRAM**

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations on the Delaware Student Testing Program. These amendments are necessary in order to carry out the requirements of 14 **Del. C.**, Sections 151 through 153. The recommended amendments add part 2.4 concerning breaches of security on the testing process to Section 2.0, Security and Confidentiality and add part 3.4.1 Other Indicators in part 3.4., Below the Performance Standard (Level 2). Completely new sections 4.0 through 8.0 are also being added as amendments. These sections are titled: 4.0., Promotion and Summer School, 5.0., Students with Disabilities, 6.0., Irregular Conditions, 7.0., Notification to Parents or Guardian and 8.0., High School Diploma Requirements.

C. IMPACT CRITERIA

1. Will the regulations help improve student achievement as measured against state performance standards?

The new regulations will help to improve student performance by assessing student progress on meeting the

requirements of the state content standards.

2. Will the regulations help ensure that all students receive an equitable education?

The new regulations address assessment issues, not equity issues.

3. Will the regulations help to ensure that all students' health and safety are adequately protected?

The new regulations address assessment issues, not health and safety issues.

4. Will the regulations help to ensure that all students' legal rights are respected?

The new regulations address assessment issues, not students' legal rights.

5. Will the regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The new regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The new regulations will add to the reporting and administrative requirements in the local school districts but the Del. C. directs the Department of Education to make such regulations.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing performance in the core academic subjects of mathematics, science, language arts and social studies?

The new regulations will be consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The Del. C. requires the Department of Education to make such regulations.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There are additional costs associated with the Delaware Student Testing Program but the state has funded and will continue to fund the majority of the program costs.

#### 100.1 Delaware Student Testing Program

July 1999

1.0 General: Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the *Delaware Code* and the regulations of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature shall include, without limitation, the following acts and omissions:

2.3.1 duplicating secure examination materials;

2.3.2 disclosing the contents of any portion of a secure test;

2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority

that an individual has engaged in conduct outlined above;

2.4 Reported breaches of security related to the Delaware Student Testing Program shall be investigated by Department of Education staff. Upon determination that a security breach has occurred, the Secretary of Education shall levy an appropriate consequence ranging from a letter of reprimand to revocation of professional license.

3.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the Performance Standard (Level 2): A

student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process. Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.

3.4.1 Other Indicators: Other indicators may be considered when determining the Level of Performance for students who score Near the Performance Standard. Students who meet the requirements of one or more of the indicators for the assessments listed below shall have their performance classified as Level 3, Meets the Performance Standard.

3.4.1.1 For grades 3, 5, 8 & 10 in reading: If the student's assigned proficiency on the writing portion of the Delaware Student Testing Program is Meets the Performance Standard or better, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as established by the State or local districts.

3.4.1.2 For grades 3, 5, 8 & 10 in reading: If the student's assigned National Percentile Ranking is in the top quartile on the normative portion of the Delaware Student Testing Program reading test, the student shall be eligible for promotion providing he/she has met all other requirements for promotion as established by the State or local districts.

3.4.1.3 For grades 3, 5, 8 & 10 in reading: The Department of Education shall certify a score on any district administered reading test approved by the Department that would be sufficient for eligibility for promotion.

3.4.1.4 For grade 8 in mathematics: If the student's assigned National Percentile Ranking is in the top quartile on the normative portion of the Delaware Student Testing Program mathematics test, the student shall be eligible for promotion providing he/she has met all other

requirements for promotion as established by the State or local districts.

3.4.1.5 For grade 8 in mathematics: The Department of Education shall certify a score on any district administered mathematics test approved by the Department that would be sufficient for eligibility for promotion.

3.4.2 For the purposes of calculating a Student Diploma Index pursuant to section 8.0 High School Diploma Requirements, other indicators described in this section shall not apply to reclassify a student's level of performance.

3.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

#### 4.0 Promotion and Summer School

##### 4.1 Definitions

4.1.1 "Initial Testing" means the spring administration of the Delaware Student Testing Program (DSTP).

4.1.2 "Placement" means the location where educational services are delivered.

4.1.3 "Regular Conditions" shall include accommodations that do not interfere with the tested construct.

4.1.4 "Secondary Testing" means the end-of-summer administration of the Delaware Student Testing Program.

4.1.5 "Tertiary Testing" means the spring administration of the Delaware Student Testing Program for those students retained or taking classes under an Individual Improvement Plan (IIP) as a result of this regulation.

##### 4.2 Grades 3 and 5 Students: Reading

4.2.1 Students who test under regular conditions on the reading portion of the Delaware Student Testing Program during the initial testing shall be considered eligible for promotion when their performance level is at or above Level 3, Meets the Performance Standard, providing they have met all other requirements for promotion as established by the State and local districts.

4.2.2 Students who test under regular conditions on the reading portion of the Delaware Student Testing Program during the initial testing shall be required to participate in a summer school program designed to move the student toward proficiency when their performance level

is below Level 3, Meets the Performance Standard. The summer school program shall be provided by the student's district of residence with the following exceptions:

4.2.2.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

4.2.2.2 Where by mutual agreement of both districts and the parent or guardian of the student another district provides services.

4.2.2.3 Where by mutual agreement of the student's school district and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction and requirements for secondary testing shall be met.

4.2.3 Students required to participate in a summer school program as a result of their initial Delaware Student Testing Program scores in reading shall be required to test on an equally valid and reliable instrument of the reading portion of the Delaware Student Testing Program at the conclusion of the summer school program. Conditions for secondary testing shall be the same as during the initial testing.

4.2.4 Students who scored at Level 2, Near the Performance Standard, on the initial testing in reading and who participated in a summer school program shall be eligible for promotion at the conclusion of the program. Students who score below Level 3 on the secondary testing shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.2.5 For students who score in Level 1 or below Near the Performance Standard in Level 2, on the initial reading test, the performance level from the secondary testing shall be utilized to make placement and promotion decisions in the following ways:

4.2.5.1 Students who score at or above Level 3, Meets the Performance Standard, on the secondary testing shall be considered eligible for promotion providing they have met all other requirements for promotion as may be established by the State or local districts.

4.2.5.2 Students who score below Level 3 on the secondary testing in reading shall be retained at the previous grade level. Students who have been retained for two years because of inadequate academic performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.2.6 Students who are retained as a result of their DSTP reading score but who have achieved grade level



proficiency in other core academic subjects shall be provided a course of study in those subjects designed to help the student continue to progress at grade level proficiency. These services may be provided in the physical location where the student participated in the initial testing or at another district school.

4.2.7 Testing and Promotion After the Retention Year: All students who have been retained shall be required to test again at the conclusion of the retention year during the regular administration of the Delaware Student Testing Program. Consequences for students that result from tertiary testing shall be the same as for initial testing with the following exceptions:

4.2.7.1 Any student who scores below Level 3, Meets the Performance Standard, shall have a revised Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.2.7.2 Students whose Level of Performance has been set using other indicators pursuant to section 3.4.1 shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.2.7.3 Students who have been retained for two years because of inadequate academic performance may be promoted to the next grade level but shall have a revised Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

#### 4.3 Grade 8 & 10 Students: Reading and Mathematics

4.3.1 Students who test under regular conditions on the reading and 8th grade mathematics portions of the Delaware Student Testing Program during the initial testing shall be considered eligible for promotion when their performance level is at or above Level 3, Meets the Performance Standard, on the Reading and 8th grade Mathematics portions of the Delaware Student Testing Program providing they have met all other requirements for promotion as may be established by the State or local districts.

4.3.2 Students who test under regular conditions on the reading and 8th grade mathematics portions of the Delaware Student Testing Program during the initial testing shall be required to participate in a summer school program designed to move the student toward proficiency when their performance level is below Level 3, Meets the Performance Standard, on either the Reading and 8th grade Mathematics portions of the Delaware Student Testing Program. The summer school program shall be provided by the student's district of residence with the following exceptions:

4.3.2.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

4.3.2.2 Where by mutual agreement of both districts and the parent or guardian of the student, another district provides services.

4.3.2.3 Where by mutual agreement of the student's school district and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction and requirements for secondary testing shall be met.

4.3.2.4 If a student has been offered admission into a vocational-technical school district that district may provide summer school services.

4.3.3 Students required to participate in a summer school program as a result of their initial Delaware Student Testing Program scores in reading and/or on the 8<sup>th</sup> grade mathematics test shall be required to test on an equally valid and reliable instrument of the reading and/or on the 8<sup>th</sup> grade mathematics portion as relevant to the Delaware Student Testing Program at the conclusion of the summer school program. Conditions for secondary testing shall be the same as during the initial testing.

4.3.4 Students who scored at Level 2, Near the Performance Standard, on the initial testing in reading and/or on the 8th grade mathematics test and who participated in a summer school program shall be eligible for promotion at the conclusion of the program. Students who score below Level 3 on the secondary testing in reading and/or on the 8th grade mathematics test shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.3.5 For students who score below Level 2, Near the Performance Standard, on the initial reading and/or on the 8th grade mathematics test, the proficiency level from the secondary testing shall be utilized to make placement and promotion decisions in the following ways:

4.3.5.1 Students who score at or above Level 3, Meets the Performance Standard, on the relevant secondary testing shall be considered eligible for promotion providing they have met all other requirements for promotion as established by the State or local districts.

4.3.5.2 Students who score at Level 1 or Level 2 on the secondary testing in reading shall be retained at the previous grade level. Students who are retained as a result of their DSTP reading score but who have achieved grade level proficiency in other core academic subjects shall be provided a course of study in those subjects designed to help the student continue to progress at grade level proficiency. These services may be provided in the physical location where the student participated in the initial testing or at another regular district school or vocational-technical school district. Students who have been retained for two

years because of inadequate academic performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.3.5.3 Students who score at Level 1 or Level 2 on the secondary testing on the 8th grade mathematics test may be retained at the previous grade level or may be placed in a program such as a readiness academy designed to improve the student to a level of proficiency sufficient to be promoted.

4.3.5.4 Students who have been retained for two years because of inadequate academic performance may be promoted to the next grade level but shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.3.6 Testing and Promotion After the Retention Year: All students who have been retained shall be required to test again at the conclusion of the retention year during the regular administration of the Delaware Student Testing Program. Consequences for students that result from tertiary testing shall be the same as for initial testing with the following exceptions:

4.3.6.1 Students who have been retained for two years because of inadequate academic performance may be promoted to the next grade level but shall have a revised Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.3.6.2 Students who score at Level 1 or Level 2 (but below the Near category) on the tertiary testing in mathematics may be promoted to the next grade. Such students shall be provided a revised Individual Improvement Plan.

4.3.6.3 Any student who scores below Level 3, Meets the Performance Standard, shall have a revised Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

4.3.7 Students whose Level of Performance has been set using other indicators pursuant to section 3.4.1 shall have an Individual Improvement Plan prepared by school personnel and signed by the principal and a parent or guardian of the student.

#### 4.4 Individual Improvement Plan (IIP)

4.4.1 The Individual Improvement Plan shall be on a form prescribed by the Department of Education and shall be placed in a student's file and shall be updated annually depending on the results of further student testing. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.4.2 The Individual Improvement Plan must at a minimum describe the specific course of study that the

school will provide to help the student continue to progress to grade level proficiency.

4.4.3 The Individual Improvement Plan shall be prepared by school personnel and signed by the principal and the parent or guardian of the student.

4.4.4 A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by October 31.

4.4.5 Any dispute concerning the contents of a student's IIP shall be decided by the local Board of Education. Said Board's decision shall be final.

4.5 Summer School Program: Districts shall schedule their summer school programs so that they will conclude with the summer administration of the DSTP. The Department of Education will annually determine the dates upon which the DSTP will be administered, and will advise the school districts of those dates sufficiently far enough in advance so that the school districts can schedule their summer school programs.

4.5.1 Summer school programs shall be for the duration and intensity appropriate to the instructional needs of the student as indicated by their performance on the DSTP and any other information available concerning the student's academic requirements.

5.0 Students with Disabilities: Notwithstanding anything in these regulations to the contrary the following provisions shall apply to students with disabilities:

5.1 Students with Individualized Education Programs (IEPs) who take the Alternate Portfolio Assessment are not in the regular high school diploma track and their IEP teams will make all decisions relative to program(s) and placement.

5.2 Scores for students with Individualized Education Programs who take the DSTP with no accommodations, with aggregated accommodations and non-aggregated accommodations will be considered valid in terms of individual student accountability. Consequences will be the same as for all other students with the following exceptions:

5.2.1 The IEP will be considered the Individual Improvement Plan (IIP) and must address the need areas identified on the DSTP.

5.2.2 The IEP will guide appropriate summer school services.

5.2.3 The IEP Team will determine the appropriate grade level placement for students who do not meet the performance standard.

5.3 Students with Section 504 Accommodation Plans who take the DSTP with no accommodations, with aggregated accommodations and non-aggregated accommodations will be considered valid in terms of individual student accountability. Consequences will be the same as for all other students.

#### 6.0 Irregular Conditions

6.1 Students enrolling for the first time in Delaware public schools or reenrolling shall participate in the next scheduled administration of the DSTP and may be required by the school district to take another standardized test to establish the student's appropriate grade level for enrollment.

6.2 Students who registered an invalid score or who were unable to test due to serious illness, death in the family, or a catastrophic event, must test at the next scheduled DSTP administration, and may be required by their district to attend summer school or to participate in extended time learning sessions.

7.0 Notification to Parent or Guardian: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools must provide written notice of the same to the student's parent or legal guardian. As appropriate, such notice shall include the following: summer school, diploma, and graduation status; the student's next grade level placement; and date of the next DSTP administration.

#### 8.0 High School Diploma Requirements

8.1 Students who graduated from a Delaware public high school during or after June 2002 shall be subject to the diploma requirements stated herein.

8.1.1 Beginning in 2000 the State shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics provided that the student has achieved a Level 2 Below the Performance Standard or greater score in each of the tested areas.

8.1.2 Beginning in 2006 the State shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies provided that the student has achieved at least a Level 2 Below the Performance Standard or greater score in each of the tested areas.

8.2 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

8.2.1 Beginning with the year 2000 the assigned weights shall be .35 for reading, .35 for mathematics, and .30 for writing.

8.2.2 Beginning with the year 2006 the assigned weights shall be .23 for reading, .23 for mathematics, .18 for writing, .18 for science and .18 for social studies.

8.2.3 A single additive factor may be applied to improve the student's diploma index through the selection of an indicator certified by the Department of Education. Such an indicator shall be weighted at not more than .05 in addition to the weights assigned pursuant to 8.2.1 or 8.2.2

and shall be sufficiently aligned to Delaware Content Standards.

8.3 Students who have tested under regular conditions shall qualify for State of Delaware High School diplomas as follows:

8.3.1 A student shall be awarded a Distinguished State Diploma upon achievement of a diploma index to be established by the Department of Education provided that the student has met all other requirements for graduation as established by the State or local districts.

8.3.2 A student shall be awarded a Merit State Diploma upon achievement of a diploma index to be established by the Department of Education provided that the student has met all other requirements for graduation as established by the State or local districts.

8.3.3 A student shall be awarded a Standard State Diploma upon achievement of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State or local districts.

8.3.4 Those students who achieve a diploma index below 3.0 shall not be eligible to receive a State Diploma.

8.3.5 A student below the age of 21 years whose diploma index is not sufficient to obtain a State Diploma shall be permitted to retest at least once annually at State expense.

8.3.6 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned proficiency level in each content area will be used in calculating the diploma index.

---

#### **EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)**

#### **SCHOOL TRANSPORTATION**

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks to amend the regulations on School Transportation. These regulations are found in the School Transportation Manual, April 1976. The School Transportation Manual is a combination of technical assistance, Department of Education regulations and sections of the Delaware Code, primarily Title 14, Chapter 29, and some parts of Title 14, Chapters 4 and 5 and in Title 21. The purpose of the amendments is to isolate the regulatory sections from the technical assistance and the

Delaware Code citations. The amendments also reorganized the document combining topics that were previously fragmented, updated the language and the references and renumbered the sections as per our regulation format. There are twenty sections in the amended regulations. The following changes were made to the amended regulations:

- Deleted Chief State School Officer, State School Transportation Supervisor and Local School Transportation Supervisor responsibilities/job descriptions.
- Deleted job certification requirements.
- Added student passengers need to walk around the crossing-control arm when passing in front of the bus.
- Added requirement for headlights or daytime running lights to be on when the bus is in operation.
- Deleted maintenance, inspection and service personnel descriptions.
- Deleted planning school sites for school buses section.
- Deleted list of allowable school bus load/assigned. Use the same planning factors of 13" per pupil for grades K-6 and 15" per pupil for grades 7-12.
- Deleted policy authorizing personnel to ride school buses during energy crises.
- Revised procedures for parents to request private transportation allowance.
- Revised the state drug and alcohol policy for school bus drivers and aides.

## C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations address school transportation issues, not state achievement standards.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address school transportation issues, not equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address school transportation issues and do contain a number of references designed to provide for student safety on school buses.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address both the students' rights and responsibilities as they ride the school buses.

5. Will the amended regulations preserve the necessary authority and flexibility of decision-makers at the local board and school level?

The amended regulations preserve the necessary authority and flexibility of decision-makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision-makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision-makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision-making authority and accountability for addressing the subject to be regulated will remain in the same entity?

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations are consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

9. Is there a less burdensome method for addressing the purpose of the regulation?

The Delaware Code requires the Department of Education to make regulations concerning school transportation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state or local school boards for complying with the amended regulations.

**\* Please refer to the School Transportation Manual available from the Department of Education for original text.**

1100.2 Transportation

1.0 Responsibilities of Local Superintendents: Local District Superintendents or their designees shall assume the

following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

2.0 Conditions for School Bus Contractors: School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

3.0 Responsibilities of School Bus Drivers: Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and

school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year. The drug policy applies to all bus aides.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level.

4.1.3 File with the district transportation supervisor a notarized affidavit attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the drug and alcohol testing procedures established for school bus drivers and subsequently, as a condition of continued employment, submit to drug testing pursuant to the drug testing policy established by the Department of Education.

4.1.5 The bus aide shall never have been convicted of the manufacture, delivery, or possession with intent to deliver a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV, or V of Chapter 47, Title 16 of the Delaware Code in this State or any other jurisdiction.

4.1.6 The bus aide shall never have been convicted of any other felony in this state or any other jurisdiction in the last five years.

4.1.7 The bus aide shall never have been convicted of any crime against a child in this State or any other jurisdiction.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist disabled students with personal needs associated with their handicapping conditions.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

5.0 Student Conduct on School Buses: School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from

the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

6.0 Procedures for Operating Buses: Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be excluded from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action at the earliest possible moment after such exclusion. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils

are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Dogs or other animals are not permitted on school buses unless a medical physician determines it is required for a student.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be

on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

7.0 Accident Reports: All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 A complete description of the drivers of each vehicle involved including name, date of birth, sex, years of driving experience, license number, and occupation.

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

8.0 Transportation Benefits: Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal

residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or caregiver as described in Title 14, Section 202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Permission may be granted for pupils to ride a school bus on a temporary or permanent basis when the pupil

has a medical statement from a physician that certifies that the pupil is unable or should not walk from home to school and return.

9.0 Bus Capacities: Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

10.0 Loading and Unloading: Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

11.0 Unique Hazards: Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of



concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

12.0 Contingency Plans: Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

13.0 Reimbursements for School Bus Ownership and or Contracts: School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district

operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 Reimbursement for buses when there are Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors shall be paid the normal rate of pay as provided for in their contract, less the allowance for operation including fuel, oil, tires, and maintenance.

13.6.2 Contractors with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.3 School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.

13.6.4 Districts with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.5 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

15.0 Transportation Allowances for Individuals: Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage travelled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

16.0 Cost Records: Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

17.0 Bus Replacement Schedules: The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be

replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced ( it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

- In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

18.0 School Bus Inspections: The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

20.0 Drugs and Alcohol: The illegal use, sale, or possession of intoxicants, narcotics, prescription drugs, or other controlled substances, or being under the influence of the same, by a school bus driver or aide (hereinafter referred to as employee) while on the job or on school property, or on school buses or vehicles shall result in immediate suspension without pay and recommendation for job termination.

20.1 The Delaware Department of Education, in order to promote the health and safety of all employees and students, shall routinely conduct drug/alcohol testing of all employees to determine fitness for duty. The following procedures shall be instituted in implementing the drug/alcohol testing program:

20.1.1 District supervisory personnel or supervisory employees of the school bus contractors who determine whether an employee must be drug/alcohol tested based on "reasonable cause" shall receive a minimum of one (1) hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse.

20.1.2 Pre-employment Testing: No employee will be hired unless that person passes a drug test.

20.1.3 Random Testing: At least 50% of all employees shall be drug/alcohol tested and 10% (as required by federal DOT) of all employees shall be alcohol tested every 12 months. The employees for testing shall be selected by using a random number table that is matched with an employee's social security number.

20.1.4 Testing Based on Reasonable Cause: Whenever there is reasonable cause to believe that an employee is using a prohibited drug/alcohol, such employee shall be drug/alcohol tested. The decision to test will be based on a reasonable and articulate belief that the employee is using a prohibited drug/alcohol on the basis of specific, contemporaneous physical, behavioral or performance indicators of probable drug/alcohol use. The supervisor of the employee shall make the decision to test with the assistance of a district employee or supervisory employee of the school bus contractor trained in detecting possible drug/alcohol use.

20.1.5 Supervisors and employees shall all receive at least a one hour seminar educating them about: the critical problem of alcohol and drug abuse in the work place; the drugs to be tested for; how the drug testing will be conducted; drug screening; security and chain-of-custody procedures for the sample; federally approved drug testing facilities are used; medical review doctors receive the results; and employee assistance program offerings.

20.1.6 If an employee is under medical treatment

involving a controlled substance or medication which might impair response and affect fitness for duty, documentation should be on file in the office of the District Transportation Supervisor of the driver's fitness to drive a school bus. A telephone call shall be made to the physician's office by the company/agency responsible for the impairment screening, substantiating that the documentation is a true and correct statement of the driver's fitness issued by the physician. A notation of the time, date and person obtaining that substantiation shall be duly noted. Determination as to the driver's fitness for duty shall be made only after such substantiation is made.

20.1.7 Any employee failing a drug/alcohol test without documentation of acceptable medical cause shall be immediately suspended without pay and recommended for termination. Refusal to be tested pursuant to these regulations shall also be grounds for termination of employment.

**\* PLEASE NOTE: THE DEPARTMENT OF EDUCATION WILL PRESENT THE ABOVE TWO REGULATORY CHANGES TO THE STATE BOARD OF EDUCATION AT IT'S REGULAR MEETING, ON THURSDAY, NOVEMBER 18, 1999 AT 2:00 P.M..**

---

## **DEPARTMENT OF FINANCE**

Statutory Authority: 29 Delaware Code,  
Section 6102(q), (r)

The Secretary of Finance proposes five new chapters for the administration of the **Education Expense and Property Tax Relief Fund** that are summarized below:

1. Adopt chapter 1 to specify the legislative source of the regulatory authority of the Secretary of Finance.
2. Adopt chapter 2 to define more specifically terms (county, school district, plan, residential, school board) referenced in the statute.
3. Adopt chapter 3 to specify the duties of counties to provide in a timely way data necessary for implementing the statutory intent to school districts and the Secretary of Finance.
4. Adopt chapter 4 specifying the reporting forms and requirements of school boards and districts.
5. Adopt chapter 5 to specifying the duties of the Secretary of Finance in supplying forms to school districts, issuing refunds to taxpayers, complying the Internal Revenue Code requirements, and paying the county receivers of taxes for administrative costs.

The Secretary of Finance proposes six new chapters for

the administration of the Elderly Property Tax Relief and Education Expense Fund that are summarized below:

1. Adopt chapter 1 to specify the legislative source of the regulatory authority of the Secretary of Finance.

2. Adopt chapter 2 to define more specifically terms (county, school district, plan, principal residence, school board) referenced in the statute.

3. Adopt chapter 3 to specify the duties of counties to provide in a timely way data necessary for implementing the statutory intent to school districts and the Secretary of Finance, to include inserts in mailing of tax bills, and to verify the primary residency status of persons making application for tax credits from the Fund.

4. Adopt chapter 4 specifying the reporting forms and requirements of school boards and districts.

5. Adopt chapter 5 to specify the duties of the Secretary of Finance in supplying forms to school districts, issuing refunds to taxpayers, complying the Internal Revenue Code requirements, and paying the county receivers of taxes for administrative costs.

6. Adopt chapter 6 to specify the requirement for qualifying persons 65 and over to make application for eligible for the Program and to specify the deadline for application.

The public may obtain copies of the proposed regulations from the Office of the Secretary of Finance, 820 N. French Street, Wilmington, DE 19801 or by calling (302) 577-8987. The Secretary of Finance will accept written public comments from November 1, 1999 to November 30, 1999.

## PROPOSED REGULATIONS FOR EDUCATION EXPENSE AND PROPERTY TAX RELIEF FUND Ch. 61

### 1.0 Introduction

These regulations are authorized pursuant to §6102(r) of Title 29 of the **Delaware Code**.

### 2.0 Definitions

The following words shall be accorded these meanings for the purpose of administering this fund:

“county” – the county receiver of taxes, director of finance, or other responsible party for school property tax billing and collection in New Castle, Kent, and Sussex Counties.

“plan” – the form, approved through majority vote of the whole school board, submitted to the Secretary of Education, Secretary of Finance, Budget Director, Controller

General, and the county receiver of taxes and county treasurer, detailing the purposes for using the monies allocated under §6102(r) of Title 29 of the **Delaware Code**.

“residential” – real property whose primary purpose is habitation including single occupancy dwellings, multiple occupancy (or multiple-family) dwellings, condominiums, trailers on owned property, and trailers owned and located on rented property, but not apartments.

“school board” – as defined in §1901 of Title 14 of the **Delaware Code**.

“school district” – regular school districts as defined by §1901 of Title 14 of the **Delaware Code** and county vocational high school districts with taxing authority pursuant to Chapter 26 of Title 14 of the **Delaware Code**.

### 3.0 County: Duties

The following duties are required of all counties:

3.1 Provide each school district eligible to offer tax relief pursuant to §6102(r) of Title 29 on an annual basis the taxable assessed value of residential property in that school district. For tax years beginning on or after May 1, 1999 and before May 1, 2000, the county shall provide such information to the school districts as soon as possible, but no later than September 15, 1999. For tax years beginning on or after May 1, 2000, the county shall provide such information to the school districts twenty days before the deadline for school districts to submit their tax rates to the county.

3.2 Provide in electronic form acceptable to the Secretary of Finance no later than January 31, 2000, for each district authorizing a tax reduction in the tax year beginning on or after May 1, 1999 and before May 1, 2000, a list of taxpayers, billing addresses, the taxable assessed value of the property owned by that tax payer, and the amount of total school tax paid by said taxpayer, including any capitation tax.

### 4.0 School Board and School Districts: Duties

4.1 Develop and submit a plan using the form pursuant to §6102(r)(4) of Title 29 of the **Delaware Code** using the form supplied by the Secretary of Finance.

4.2 Report to the county receiver of taxes and county treasurer any authorized reduction in the rate of school property tax on residential property as required by §6102(r)(6) of Title 29 of the **Delaware Code** by October 30, 1999.

### 5.0 Secretary of Finance: Duties

5.1 Supply to school boards and school districts the form necessary to comply with §6102(r)(4) of Title 29 of the **Delaware Code**.

5.2 Cause the State Treasurer to prepare checks for all

taxpayers owed refunds of school property tax for tax year beginning May 1, 1999 and before May 1, 2000.

5.3 Mail checks to taxpayers owed refunds less than \$600.

5.4 Issue no rebate for tax years beginning May 1, 1999 until the county informs the Secretary of Finance that the qualified person has paid in full their property taxes for that tax year in a timely manner.

5.5 Contact taxpayers owed refunds equal to or greater than \$600. Issue refunds to these taxpayers after receiving from taxpayer information necessary to comply with I.R.S. regulations for issuing Form 1099 for refunds of taxes other than personal income tax that are equal to or greater than \$600.

5.6 Ensure that the Department of Finance issues Form 1099 for all taxpayers owed a refund equal to or greater than \$600 in accordance with §6041 of Internal Revenue Code of the United States.

**PROPOSED REGULATIONS FOR ELDERLY  
PROPERTY TAX RELIEF AND EDUCATION  
EXPENSE FUND**

**Ch. 61**

1.0 Introduction

These regulations are authorized pursuant to §6102(q) of Title 29 of the **Delaware Code**.

2.0 Definitions

The following words shall be accorded these meanings for the purpose of administering this fund:

“county” – the county receiver of taxes, director of finance, or other responsible party for school property tax billing and collection in New Castle, Kent, and Sussex Counties.

“plan” – the form, approved through majority vote of the whole school board, submitted to the Secretary of Education, Secretary of Finance, Budget Director, Controller General, and the county receiver of taxes and county treasurer, detailing the purposes for using the monies allocated under §6102(r) of Title 29 of the **Delaware Code**.

“principal residence” – the place a “qualifying person”, as defined in §6102(q) of Title 29 of the **Delaware Code**, voluntarily fixed as their dominant and permanent habitation with an intent to remain in such place for the indefinite future and verifiable by the location of the person’s source(s) of income, the address used for payment of federal, state personal income taxes and billings of local residential property taxes, and the residence listed on the qualifying person’s driver’s license, and the residence listed for purposes of voting. None of these factors alone shall be

considered dispositive, except that a person must intend to reside at that residence for a minimum of 183 days in the tax year for which the credit is claimed. Consideration of all these factors together, as well as a qualifying person sworn application claiming principal residence status, shall be considered in determining the primary residence of a qualifying person.

“school board” – school boards as the term is used in §1901 of Title 14 of the **Delaware Code**.

“school district” – regular school districts as defined by §1901 of Title 14 of the **Delaware Code**.

3.0 County: Duties

The following duties are required of all counties:

3.1 Provide in electronic form acceptable to the Secretary of Finance, for each district authorizing a tax reduction in the tax year beginning May 1, 1999, a list of qualifying taxpayers, billing addresses, and the amount of school tax paid by said taxpayer and the school tax that would have been due taking into account the authorized reduction approved by the local school board pursuant to §6102(q) (i.e. the amount of school tax paid minus the amount of school tax due after considering any elderly property tax relief provided under this program), after taking into account any reduction authorized pursuant to §6102(r) of Title 29 of the **Delaware Code** (otherwise known as the elderly property tax relief and education expense program). The first such transmission shall occur no later than January 31, 2000 and by the last day of each month thereafter until May 31, 2000.

3.2 Provide, for tax years beginning May 1, 2000 and thereafter, to the Secretary of Finance no later than November 15th of each tax year the total amount of credits awarded within each individual school district authorizing tax relief pursuant to §6102(q) of Title 29.

3.3 List a credit on tax bills mailed for tax years beginning after May 1, 2000 on a separate line entitled “State Elderly Tax Relief Fund”.

3.4 Include in the mailing of tax bills an insert developed by the Secretary of Finance, developed in consultation with the counties, that explains the elderly property tax relief program.

3.5 Verify the “principal residence” status of individuals making application for tax credits pursuant to §6102(q). The county and the Secretary of Finance may require and review information that they deem relevant to determining a qualified person’s principal residence, as defined herein.

4.0 School Districts and School Boards: Duties

The following duties are required of all school boards:

4.1 Develop and submit a plan using the form pursuant

to §6102(q)(3) of Title 29 of the **Delaware Code** using the form supplied by the Secretary of Finance.

4.2 Report, as required by §6102(q)(3) of Title 29 of the **Delaware Code** to the county receiver of taxes and county treasurer any authorized reduction in the school property tax on primary residential property owned by qualified persons 65 and over by October 30, 1999. This report shall take the form of a letter in a form supplied by the Secretary of Finance.

#### 5.0 Secretary of Finance: Duties

The following duties are required of the Secretary of Finance:

5.1 Supply to school boards and school districts the form necessary to comply with §6102(q)(3) of Title 29 of the **Delaware Code**.

5.2 Supply to school boards and school district an estimate of funds allocated to districts from funds available pursuant to §6102(q) of Title 29 of the Delaware Code.

5.3 Cause the State Treasurer to prepare checks for all taxpayers owed refunds of school property tax for tax year beginning May 1, 1999 and before May 1, 2000.

5.4 Mail checks to taxpayers owed refunds.

5.5 Issue no rebate for tax year 1999 until the county informs the Secretary of Finance that the qualified person has paid in full their property taxes for that tax year.

5.6 Provide appropriate notice to taxpayers 65 and over qualifying for tax relief pursuant to §6102(q) of Title 29 of the **Delaware Code**.

5.7 Pay over, after receiving the report required under §1919(c)(1) of Title 14, to each receiver of taxes an amount up to 5% of the credits claimed, but not to exceed \$50,000.

5.8 Pay over, after receiving the report required under §1919(c)(1) of Title 14 and calculating the rate of application by district, the amount a district not opting to provide tax relief to elderly property tax owners should receive under the approved allocation formula.

#### 6.0 Application for Elderly Property Tax Relief

6.1 Each person desiring to obtain tax relief pursuant to §6102 (q) of Title 29 of the **Delaware Code** shall submit an application to the county receiver of taxes on a form specified and supplied by the Secretary of Finance, unless such person has applied and been previously qualified for existing county exemptions for persons 65 and over on their primary residences. For persons 65 and over previously qualified for an existing county program, their application for that program may be considered a valid application for the Elderly Property Tax Relief Program.

6.2 For tax years beginning after May 1, 1999 and before May 1, 2000, qualifying taxpayers must submit the application no later than April 15, 2000.

6.3 Taxpayers may, at the discretion of the Secretary of Finance or the county, be required to submit evidence

sufficient to prove that the taxpayer and residence qualifies for tax relief pursuant to §6102(q) of Title 29 of the **Delaware Code**.

### DIVISION OF REVENUE

### DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,  
Section 4805(a) (29 **Del.C.** 4805(a))

The Delaware Lottery Office proposes amendments to **Section 29 of the Regulations on Non-Discrimination of the Basis of Disability to Delaware Lottery Programs**. The amendments are summarized below:

1. Amend Rule 29(1) to add a new subsection (l) which adds a definition for the term "technically infeasible."
2. Amend Rule 29(6)(d) concerning the exemption for Landlord refusal. The proposed amendment revises the exemption based on a landlord's refusal to pay for improvements required by the Lottery for the period of the lease.
3. Amend Rule 29(6)(f) to add a new exemption for "technical infeasibility".

Copies of the existing regulations and proposed regulations as amended may be obtained from the Delaware Lottery Office, 1575 McKee Road, Dover, DE 19904-1903; phone (302) 739-5291. The contact person at the Lottery Office is Brian Peters, Deputy Director of Marketing. The Commission will accept written comments from the public from November 1, 1999 through November 30, 1999. A public hearing will be held at the Delaware Lottery Office, 2<sup>nd</sup> Floor Conference Room, 1575 McKee Road, Dover, DE on November 30, 1999 at 3:00 p.m..

### Proposed Changes

(29) Non-Discrimination on the Basis of Disability in Delaware Lottery Programs

#### (1) Definitions

a) "Accessible" means complying with the technical requirements found in the ADA Accessibility Guidelines (ADAAG).

b) "Accessible Route" means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at

vehicular ways, walks, ramps, and lifts.

c) "ADA" means the Americans with Disabilities Act (42 United States Code. §§12101-12213 and 47 United States Code §225 and §611).

d) "Director" means the Director of the State Lottery Office.

e) "Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

f) "Facility" means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

g) "Lottery Program" means on-line and instant games offered to the public through retailer licensees.

h) "Lottery" or "State Lottery Office" means the lottery established by the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware.

i) "Lottery Retailer" or "Retailer" means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services.

j) "Inspection Report" means a completed survey of the retailer or applicant facility that identifies barriers to program accessibility, if any and suggest possible solutions.

k) "Service Site" means an area within a lottery retailer facility where a customer can purchase a lottery related product. This is usually the cashier's station.

qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

l) "Technically Infeasible" means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

## (2) Purpose

a) The Americans with Disabilities Act (P.L. 101-336, U.S.C. §§ 12131-12134), known as the ADA, prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this regulation is to ensure that the Delaware Lottery is in compliance with the ADA by ensuring that people with disabilities have access to Delaware Lottery programs.

b) In defining the scope or extent of any duty imposed by these regulations including compliance with the standard of accessibility defined in paragraph 3(b), higher or more comprehensive obligations established by otherwise applicable federal, state or local enactment may be considered.

## (3) General Requirements

a) Prohibition of discrimination. No lottery retailer shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility.

b) Standard of accessibility. Each Retailer is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the lottery program. An accessible route must be provided comprised of the following accessible elements:

1) Parking if parking is provided to the general public;

2) Exterior route connecting parking (or a public way if no parking is provided) to an accessible entrance;

3) Entrance;

4) Interior Route connecting the entrance to a service site.

c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991.

## (4) New License Applicants

a) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with this regulation prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this regulation.

b) Inspection reports. The State Lottery Office, prior to granting a license, shall provide lottery applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility. The identified actions must be completed prior to the granting of a license.

## (5) Current Retailers

a) The State Lottery Office shall inspect the site of each lottery retailer for compliance with this regulation.

b) Inspection reports . The State Lottery Office shall provide to all current retailers an Inspection Report that shall identify barrier removal actions necessary to provide program accessibility. The identified actions must be completed within 90 days of receipt of the Inspection Report.

c) Extensions. The Director may grant an extension of up to 90 days to allow a current retailer to complete barrier removal actions identified in the Inspection Report.



(i) Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

(ii) The Director shall grant an extension only upon showing of good cause.

(6) Permitted exemptions

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer to determine if the retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal would threaten or destroy the historic significance of the structure, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

c) Legal impediment to barrier removal. Any law, act, ordinance, state regulation, ruling or decision which prohibits the lottery retailer from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery retailer requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).

d) *Landlord refusal.* An exemption may be granted based on the refusal of a landlord to grant permission to a Lottery retailer to make structural improvements required by the Lottery under this rule or based on the refusal of a landlord to pay for improvements required by the Lottery under this rule. The exemption shall only apply to the retailer's current term, and does not include any possible renewal periods under the lease. To request such an exemption, the retailer must submit documentation to the Director that the retailer requested the Landlord's permission and financial participation to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the retailer's request.

e) Undue financial hardship. A limited exemption

may be granted if a retailer can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the retailer's facility is an undo financial hardship in that the cost of making such a change(s) exceeds 25% of the retailer's compensation from the Lottery for the prior calendar year (An annualized sales figure based upon the retailer's most current 13-week sales period shall be used for those retailer locations with less than a full year's history of sales.) Under the terms of this limited exemption, a retailer would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Lottery in the prior calendar year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A retailer shall provide all supporting documentation requested by the Director to substantiate the, cost estimates of making the required improvements to the retailer's location.

f) *Technical Infeasibility.* A permanent exemption may be granted if a retailer can demonstrate that the removal of architectural barriers identified in the inspection report is not possible due to technical infeasibility. If such a claim is made, the Lottery may have the barrier removal action evaluated by a person knowledgeable in accessibility codes and construction to determine the merits of the claim.

g) Alternative methods. Where an exemption is granted in accordance with the provisions of this subchapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

- 1) Providing curb service;
- 2) Directing by signage to the nearest accessible lottery retailer.

(7) Complaints Relating to Non-Accessibility

a) An aggrieved party may file an accessibility complaint with the Lottery Director or designee for review. Complaints must be in writing and, where possible, submitted on an ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery retailer is not in compliance with this regulation, a letter of non-compliance will be issued to the lottery retailer with a copy to the complainant. If the lottery retailer is determined to be in compliance, a letter so stating will be mailed to the retailer and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of noncompliance within 30 days after the completion of an onsite inspection of the lottery retailer facility if the agency determines that the lottery retailer is not in compliance with this regulation.

b) If the letter of non-compliance shows deficiencies in the accessibility of the retailer facility, the lottery retailer shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery retailer will achieve compliance with this regulation. Compliance shall be accomplished within 90 days of the letter of non-compliance. The Lottery may, upon request, grant the lottery retailer additional time to submit the plan for good cause.

c) Within 20 days of the submission of the plan to the agency, the Lottery shall notify the lottery retailer of the agency's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified.

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of noncompliance and has not requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Lottery may, upon request, grant the lottery retailer additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.

f) If the corrective action taken by the lottery retailer corrects the deficiencies specified in the letter of noncompliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this regulation, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the agency.

h) A license will be suspended if the Lottery determines that the lottery retailer has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Lottery determines that the lottery retailer has not made a good faith effort to correct the deficiencies listed in the compliance report, this inaction will result in the revocation of the lottery license for that lottery licensed facility.

i) While proceedings to suspend or revoke a lottery retailer's license are pending pursuant to this regulation, and until a notice of compliance is issued pursuant to subsection (c) of this section, the Lottery shall withhold incentive

payments from the lottery retailer. In addition, if a license is revoked pursuant to this regulation, and incentive payments and other privileges have been withheld from the affected retailer pending review of the complaint, the lottery retailer forfeits any claim to such incentive payments or other privileges.

(8) Request for Hearings

a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this regulation, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative hearing not later than 30 days before the date of the hearing.

b) All relevant rules of evidence and time limits established in these rules shall apply to hearings conducted under this regulation.

(9) Non-Exclusivity of Remedies

a) Remedies established by these regulations are not intended to supplant, restrict or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and Del. Code Ann., title 6, ch. 45 (1993).

---

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122 (16 **Del.C.** 122)

The Delaware Health and Social Services (DHSS) will hold a public hearing to discuss proposed Delaware **Regulations for the Conrad State 20 / J-1 Visa Waiver Program**. These proposed regulations describe the requirements and procedures for an international medical graduate (IMG) requesting State support for a J-1 visa waiver. DHSS is also proposing a new process for supporting a J-1 visa waiver application. These regulations further enable DHSS, as good stewards of the program, to use this authority to address the issue of physician maldistribution and to help ensure better access to quality health care services for the vulnerable populations of Delaware.

This public hearing will be held on November 30, 1999 at 2:00 PM in Room 309 of the Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling or writing the following:

Ms. Lisa Anderson  
 Health Systems Development Branch  
 Jesse Cooper Building, P.O. Box 637  
 Dover, DE 19903  
 Telephone: (302) 739-4787

**CONRAD STATE 20/J-1 VISA WAIVER  
 APPLICATION REGULATIONS  
 JULY 1999  
 Conrad State 20/J-1 Visa Waiver Program  
 Policy and Procedures**

Anyone wishing to present oral comments at this hearing should contact Ms. Lisa Anderson at (302) 739-4787 by November 23, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by December 2, 1999 to:

Dave Walton, Hearing Officer  
 Division of Public Health  
 PO Box 637  
 Dover, DE 19903

**SUMMARY OF PROPOSED REGULATIONS  
 DELAWARE CONRAD STATE 20 / J-1 VISA  
 WAIVER PROGRAM**

These are new regulations and are to be adopted in accordance with Chapter 1, Section 122, Title 16, **Delaware Code**.

The Delaware Health and Social Services (DHSS) will hold a public hearing to discuss proposed Delaware Regulations for the Conrad State 20 / J-1 Visa Waiver Program on November 30, 1999 at 2:00 PM in Room 309 of the Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware. International medical graduates (IMGs) completing their graduate medical education in the United States under a J-1 Visa are normally required to return to their country of nationality for at least two years before reentering the United States. However, acting as an interested state agency, DHSS may make a recommendation to the U.S. Department of State, Bureau of Consular Affairs Waiver Review Division (DOS) to, in turn, recommend that the Immigration and Naturalization Service (INS) waive the home residence requirement for up to twenty (20) J-1 physicians annually. These proposed regulations describe the requirements and procedures for an international medical graduate (IMG) to use to request State support for a J-1 visa waiver. DHSS is also proposing a new process for supporting a J-1 visa waiver application. These regulations enable DHSS, as good stewards of the program, to use this authority to address the issue of physician maldistribution and to help ensure better access to quality health care services for the vulnerable populations of Delaware.

The Conrad State 20 / J-1 Visa Waiver Program regulations apply to any applicant requesting a waiver of the two-year home residency requirement who will work in the State of Delaware.

**I. PURPOSE**

This document will specify the procedures to be used by the Delaware Health and Social Services (DHSS) in administering the Conrad State 20/J-1 Visa Waiver Program (Program).

**II. AUTHORITY**

Delaware Code, Title 16, Chapter 1, Section 122, Public Law 103-416 United States Code

**III. BACKGROUND**

International medical graduates (IMG) completing their graduate medical education in the United States under a J-1 Visa are required to return to their country of nationality for at least two years before reentering the United States. Acting as an interested state agency, DHSS may make a recommendation to the U.S. Department of State, Bureau of Consular Affairs Waiver Review Division (DOS) to, in turn, recommend that the Immigration and Naturalization Service (INS) waive the home residence requirement for up to twenty (20) J-1 physicians annually. Additionally, a J-1 physician may apply directly to the United States Department of Agriculture (USDA) for a J-1 visa waiver. In order to receive a letter of support for the J-1 physician applicant from DHSS, however, applications must first meet Program requirements, described herein.

**IV. POLICY STATEMENTS**

DHSS is committed to ensuring that quality health care is available to all residents of the State of Delaware. In an effort to ensure adequate medical services are provided in underserved areas, DHSS has elected to take advantage of the Conrad State 20/J-1 Visa Waiver Program.

Under this program, DHSS has established state-specific procedures that require sponsoring sites to submit a Site Application. This application consists of 1) a needs assessment, 2) proof that the sponsoring site has unsuccessfully attempted over a six month period to hire a physician with United States citizenship, 3) three letters of support from community leaders and local public health officials, 4) strategy for long-term and short-term retention, 5) sponsoring site waiver agreement, and 6) a site application form.

The needs assessment must establish and document that a particular need exists within the sponsoring site's service area before the site will be approved to hire a J-1 physician under the Conrad State 20/J-1 Visa Waiver Program. The onus to establish the need rests solely with the sponsoring

site.

The Site Application will be reviewed and approved or disapproved by a Board. DHSS will provide written notice to the site of the application's approval/disapproval. A J-1 visa waiver application on behalf of a particular J-1 physician may not be submitted until the sponsoring site has been approved. J-1 visa waiver applications will only be accepted from J-1 physicians who have signed a contract with a *pre-approved* site.

DHSS will submit recommendations to the DOS on behalf of qualified J-1 physician applicants who agree to practice medicine full-time at a pre-approved sponsoring site for a minimum of three years in a federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA) of Delaware with a *pre-approved* site.

DHSS participation in the Conrad State 20/J-1 Visa Waiver Program is completely discretionary and voluntary. DHSS may elect not to participate in the Program at any time. The submission of a complete waiver package does not ensure DHSS will recommend a waiver in all instances. No more than 20 applications will be approved each Federal fiscal year. DHSS reserves the right to recommend or decline any request for a waiver.

This policy applies in full to any waiver submitted on behalf of a J-1 physician to be employed in Delaware.

## V. DHSS DUTIES AND RESPONSIBILITIES

The Health Systems Development Branch of the Delaware Division of Public Health (DPH) has primary responsibility within DHSS for processing J-1 visa waivers. DHSS serves as the "interested state agency" with the Director of Public Health having the authority to sign the recommendations. Applications must be processed in the best interest of the health care needs of Delawareans.

## VI. APPLICABILITY

These procedures apply to the following:

- All J-1 physicians seeking a J-1 visa waiver under PL 103-416 for employment in Delaware.
- All sponsoring sites seeking approval to hire a J-1 physician under the J-1 Visa Waiver program.
- All DHSS employees processing J-1 visa waivers under PL 103-416.

## VII. APPLICATION PROCESS

### **Sponsoring Site Pre-Approval Application Requirements**

The Site Application (see Appendix A for Application forms) must, at a minimum, include the following:

#### A. Site Application Form:

1. Sponsoring Site: Provide the name, address, county, telephone number, fax number and the e-mail

address of site requesting approval to hire a J-1 physician. Also, please specify if the site is for profit or not for profit.

2. Practice Site: Provide the name, address and county of actual practice site where the requested J-1 physician would practice, if different from the primary location of the sponsoring site.

3. Recruitment Contact: Provide the name, address, county, telephone number, fax number and e-mail address of the individual responsible for physician recruitment.

4. Site Data Regarding Active Clients: Provide the total number of active patients at the practice site in the previous calendar year. Indicate total patients, as applicable, for primary care, specialty care and mental health services. Provide pro-rated or estimated annual totals if the site was not operational for the entire previous calendar year. For new sites, estimate the number of patients anticipated for the next year. Of the total number of patients, provide the percentage of all current patients, broken out by given age groups, making payment by conventional insurance plans, Medicare, Medicaid or on a sliding fee scale. A copy of the sliding fee scale must be submitted.

5. Staffing Levels: Provide the total number of budgeted full-time equivalent providers currently on staff. Also include the number of J-1 physicians requested, by specialty, and the projected hire date of each.

6. Practice Site Hours of Operation: Indicate the normal operating hours of the practice site by the days of the week. If hours of operation vary by practitioner, please specify.

7. Proposed J-1 Physician Weekly Work Schedule: Indicate the proposed weekly work schedule of the proposed J-1 physician(s). Include the number of hours (with start and end times) and the location (hospital/practice site(s)). The schedule must indicate the amount of time the J-1 physician is actually providing services; do not include travel or on-call time.

#### B. Needs Assessment:

Sponsoring sites are encouraged to work with their local hospital to complete the needs assessment. A comprehensive, data driven needs assessment must be completed, which, at a minimum, includes the following:

1. Description of the service area in which the sponsoring site's patients are located.

2. Geographic Service Area Health Resource Inventory. Description of the other health care resources located within the same service area including physicians (by specialty), hospitals, clinics, urgent care centers and any other available outpatient care facilities. Also include the location of the nearest available source of outpatient based services, which offers a sliding fee scale to patients with limited financial resources and that provides services similar to those that are being provided by the requested J-1 physician. Using public transportation as the mode of travel,

indicate the distance and travel time to that site.

3. Documentation that the sponsoring site's service area is located within a Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA). Please indicate the following: HPSA Type(s), HPSA Service Area Number, HPSA FIPS State/County Code and the sponsoring site's primary service area (by City/County).

4. Documentation of a shortage in the defined service area for the particular physician specialty being requested under the J-1 Visa Waiver Program.

- Provide statistics demonstrating the need for a specialty and/or sub-specialty in the sponsoring site's service area.
- Document that the specialty and/or sub-specialty is not available to the underserved population in the service area.
- Describe how a J-1 physician would be used to meet the needs of the underserved population in the service area. Indicate if unique qualifications, such as cultural match or experience with the service area's underserved population, are sought to meet a particular need.

C. Retention:

The sponsoring site must provide written documentation of plans to retain the J-1 physician in the service area upon completion of the three-year practice obligation. Specifically, this plan must include short and long-term strategies that will not only keep the physician in the service area, but also will encourage the physician to continue to practice the specialty for which he/she was hired.

D. Proof of Failed Recruitment Attempts:

The sponsoring site must provide proof that attempts have been made to hire a physician with United States citizenship in the past six months to no avail. This section must include a written description of the failed attempts to recruit as well as back up documentation including, but not limited to, medical journal and newspaper advertisements, letters to medical residency programs and/or medical schools, etc. Please state any attempts to gain recruitment support from the hospital within the practice site's geographic service area.

E. Letters of Support:

The sponsoring site must submit three letters of support. Two must be obtained from community members and/or leaders in the practice site's service area. One must be obtained from a local public health official (see Appendix B for an approved contact list). Each letter must indicate the benefits of, or need for, the placement of a J-1 physician with the sponsoring site.

F. Sponsoring Site Waiver Agreement:

The director or applicant official of the sponsoring site must initial each of the statements indicating agreement to comply with requirements of the Delaware Conrad State

20/J-1 Visa Waiver Program. The form must also be signed and dated to include the title of the applicant official.

G. Signature:

The director or applicant official of the sponsoring site must provide an original, dated application with a live signature (using blue ink). This signature binds the site to the information provided and verifies that the form has been completed with accurate and current information.

### J-1 Physician Application Requirements

Applications will *only* be accepted from J-1 physician applicants who already have an employment contract with a *pre-approved* sponsoring site (see section IV above). The completed application must include the original application package and one complete copy. No more than 20 applications will be approved each Federal fiscal year. DHSS reserves the right to recommend or decline any request for a waiver.

The J-1 Physician Application (see Appendix C for application forms) must, at a minimum, include the following:

A. Letter from the Director of the Sponsoring Site:

The director of a *pre-approved* sponsoring site must submit a letter requesting a DHSS recommendation to the DOS (or other Federal approving agency) that a J-1 physician be given a waiver of the requirement to return to their country of nationality. The letter must include, or attach, each of the following:

- Description of the J-1 physician's qualifications, proposed responsibilities and how his/her employment will meet currently unmet health care needs of a medically underserved community.
- If the J-1 physician will be practicing in a HPSA or MUA that is based on a population group, the employer must provide adequate documentation of the medical care that will be provided to this group.
- Certification that the J-1 physician will provide medical care services to Medicare, Medicaid and medically underserved patients, without discrimination based upon ability to pay for such services (i.e. self-pay, sliding fee scale, charity care).
- Completed Physician Data Sheet (copy enclosed).
- Copy of the J-1 physician's curriculum vitae (CV).
- Evidence of eligibility for a Delaware medical license.
- At least three letters of recommendation from persons familiar with the J-1 physician's work.
- A signed statement from the J-1 physician agreeing to the contractual requirements set forth in Section 214 (k)(1) (B) and (C) of the Immigration and Nationality Act.
- Copies of all IAP-66 forms issued to the J-1

physician seeking the waiver.

**B. Employment Contract:**

The employment contract must, at a minimum, include the following:

- Name and address of the sponsoring site.
- Name and address of the location of the sponsoring site's practice. If the J-1 physician will work at more than one site, include the days and hours of practice at each site and a breakdown in the amount of time the physician will practice at each site.
- A statement that the J-1 physician will work not less than four days per week or more than 12 hours in a 24 hour period. The hours must be performed during normal office hours, or hours which best meet the needs of the community (e.g. evenings and/or weekends). Travel and on-call time can not be included.
- A statement that the site will employ the physician on a full-time basis (minimum of 40 hours per week, not including time spent in travel and/or on-call).
- Statement that the J-1 physician will commence practice within 90 days of receiving a waiver and will practice on a full-time basis for at least three years.

**C. Letter of No Objection from Home Country:**

A statement that the physician's home country has no objection to the physician receiving a waiver of the foreign residence requirement must be included if the J-1 physician received funding from his or her home country for medical education or training in the United States. The Certification Regarding Contractual Obligation to Home Country (HD1061F) letter must be submitted directly to the following address by the J-1 physician applicant:

Waiver Review Division  
Department of State  
Bureau of Consular Affairs, Visa Office  
CA/VO/L/W Room, L603  
2401 E Street, NW  
Washington, DC 20522-0106

**D. Evidence of Payment of the Department of State 'User Fee Required for Waiver Processing':**

The J-1 physician applicant must provide proof that the \$136.00 processing fee has been sent to the DOS. A copy of the payment (i.e. check or money order) is considered sufficient proof. DHSS will not handle the submission of this fee. The fee must be mailed directly to the following address at the time the J-1 Visa Waiver Application packet is submitted to DHSS:

Waiver Review Division

Department of State  
Bureau of Consular Affairs, Visa Office  
CA/VO/L/W Room, L603  
2401 E Street, NW  
Washington, DC 20522-0106

**E. J-1 Visa Waiver Statements:**

The J-1 physician applicant must sign and include the enclosed 'J-1 Physician Waiver Statements.'

**F. J-1 Visa Waiver Affidavit and Agreement:**

The J-1 physician applicant must include a notarized 'J-1 Visa Waiver Affidavit and Agreement.' The document must contain the J-1 physician applicant's live, notarized signature (in blue ink).

**G. J-1 Visa Waiver Application Checklist:**

The enclosed checklist must accompany the application. The J-1 physician applicant must initial each item on the checklist as proof and assurance that each item is included in the waiver application packet.

**VIII. SITE APPLICATION EVALUATION PROCESS**

The Delaware Conrad State 20/J-1 Visa Waiver Program Sponsoring Site Application Review Board (Board) will review and approve or disapprove each Site Application based on its individual merits. Board members must not serve on the review panel for applications submitted by sponsoring sites with which they have either a personal or employment-related conflict of interest. The Board will be comprised of, at least, one member from each hospital in the state, the Medical Society of Delaware, the Health Care Commission and DHSS representatives.

**A. Sponsoring Site Application Preliminary Review:**

A preliminary review of each application will be conducted by the Conrad State 20 Program manager to determine if 1) the sponsoring site is located within a HPSA/MUA and 2) that the following required documentation is completed:

- Sponsoring Site Application
- Detailed Needs Assessment
- Strategy for Long-term and Short-term Retention
- Proof of Failed Recruitment Attempts
- Letters of Support
- Sponsoring Site Waiver Agreement

The preliminary review will be conducted solely for the purpose of determining the completeness of the application; the specific content provided in each of the components will not be considered. Incomplete applications, as well as applications from a site not located in a HPSA/MUA, will be returned to the sponsoring site immediately. A checklist identifying the missing information will be included. Completed applications may

be resubmitted at any time prior to the first Monday in December.

**B. Sponsoring Site Application Review:**

The Board will convene during the month of January to review the applications submitted by the first Monday of December.

Using the Site Application Evaluation (see Appendix D for the form) as a guide, Board members must assign a score to each of the elements on the Site Application Evaluation form.

The following point scale has been assigned to each unique element:

*Review Point Scale*

Site Application Data	25
Needs Assessment	35
Retention	15
Proof of Failed Recruitment Attempts	15
Letters of Support	10
<b>Total</b>	<b>100</b>

The scores from the review element will be averaged to reach an overall total score for each Board member. The total scores received from each Board member will then be averaged to determine the final score for each site.

Sites will be approved only if:

- 1) all criteria is met,
- 2) a final score not lower than a 70 is achieved,

and

- 3) an overall score of at least a twenty-five (25) is achieved on the Needs Assessment component.

Approved sponsoring sites (whose applications were received by the first Monday in December) will be eligible to make a contractual offer to a J-1 physician for the following fiscal year (beginning October 1<sup>st</sup> of each year). However, if not all twenty Conrad State 20/J-1 Visa Waiver slots have been used for the current Federal fiscal year, approved sponsoring sites may make a contractual offer to a J-1 physician for the current fiscal year and the physician may submit a J-1 visa waiver application packet (see Appendix C for forms) immediately.

**C. Review of Applications Submitted After the First Monday in December:**

Applications received after the December deadline will be reviewed to determine if an emergent need (see Glossary for examples) for the placement of a J-1 physician is demonstrated. The application must include a detailed explanation as to the reason(s) the application was not submitted by the first Monday in December. If not all twenty Conrad State 20/J-1 Visa Waiver slots have been used for the current fiscal year, sponsoring sites demonstrating an emergent need may make a contractual offer to a J-1

physician immediately upon approval and the physician may submit a J-1 visa waiver application packet (see Appendix C for forms) for the current fiscal year. If all twenty Conrad State 20/J-1 Visa Waiver slots have been used, then approved sponsoring sites must wait until the following Federal fiscal year (beginning October 1<sup>st</sup> of each year) to submit a J-1 physician waiver application or may submit via the USDA.

**D. Notice of Approval/Disapproval:**

For those applications received by the first Monday in December, DHSS will provide written notification of the Site Application's approval or disapproval by February 15<sup>th</sup> of each year.

Applications submitted after the first Monday in December will receive written notification of the Site Application's approval or disapproval within 45 days from the date of receipt of the application by DHSS.

**IX. TIME FRAMES**

**Site Application Submission** DHSS will accept Site Applications Forms each year through the end of the business day on the first Monday in December. Site Applications submitted after the first Monday in December will be eligible to receive approval only if 1) DHSS has not used the allotted twenty recommendations for the year, and 2) an emergent need for the placement of a J-1 physician is clearly demonstrated.

**Site Notification** DHSS will notify sponsoring sites in writing of the decision to approve or disapprove their site no later than February 15<sup>th</sup> of each year. *Inquiries regarding the status of pending applications will not be accepted at any time prior to February 15<sup>th</sup>.*

**J-1 Visa Waiver Request Submission** J-1 Visa Waiver Requests may be submitted with the start of each Federal fiscal year, October 1<sup>st</sup>.

**X. COMPLETED SITE APPLICATIONS AND ASSOCIATED J-1 APPLICATIONS MUST BE SENT TO:**

Conrad State 20 Program Manager  
Division of Public Health  
Health Systems Development Branch  
P.O. Box 637  
Dover, Delaware 19903

**XI. SUBMITTING J-1 PHYSICIAN WAIVER RECOMMENDATION TO DOS**

If the J-1 visa waiver request is approved, a cover letter to DOS is prepared by DHSS identifying the J-1 physician applicant and recommending a waiver of the two-year home residence requirement be granted. Upon receipt of the DHSS approval request, DOS will review the application.

**XII. J-1 PHYSICIAN APPLICANTS RECEIVING A J-1 WAIVER**

J-1 physician applicants receiving approval of a J-1 Waiver request must begin work at the sponsoring site within ninety (90) days of notice of approval from DOS.

**XIII. REPORTING REQUIREMENTS**

An *annual reporting process* is utilized for each J-1 physician practicing under a waiver to ensure the J-1 physician continues to practice in an underserved area of Delaware for the required three years. DHSS will forward an Annual Practice Form (see Appendix E for a sample form) to the sponsoring site within thirty (30) days of the anniversary of the J-1 physician's start date. The sponsoring site must forward the signed, completed Annual Reporting Form to DHSS. An annual reporting form must be submitted for each year of practice obligation.

*Notification of waiver status and commencement of employment contract* must be submitted to DHSS upon receipt of written notification of approval from INS. This notification must include the date the three-year obligation commences.

*Contract changes which result in termination of contract, change in practice scope, and/or relocation* from a site approved in the application request to a new site must be presented in writing to DHSS at least thirty (30) days prior to the change. All reporting requirements, changes in practice location and/or scope must be submitted to the following:

Conrad State 20 Program Manager  
Division of Public Health  
Health Systems Development Branch  
P.O. Box 637  
Dover, Delaware 19903

**XIV. EXIT INTERVIEW**

Each J-1 physician practicing in Delaware must complete an exit interview within ninety (90) days of completion of his/her three-year obligation, or at such point that the employment contract is terminated by either the sponsoring site or the J-1 physician. DHSS will conduct the exit interview, which will concentrate on the J-1 physician's experiences in Delaware and their future plans for practicing medicine at the current, or another location.

**XV. J1 VISA WAIVER APPLICATION GLOSSARY**

*Department of State, Bureau of Consular Affairs Waiver Review Division (DOS)* The Federal agency that reviews the recommendations submitted by interested state agencies on behalf of J-1 physician applicants. In turn, they submit their own recommendation to the Immigration and Naturalization Service for final determination of approval/denial.

*Emergent Need* An emergent need is one that demonstrates a critical need for the placement of a J-1 physician. An emergent need includes, but is not limited to, the following: departure, death or retirement of a clinical physician providing a majority of medical care needs.

*Health Professional Shortage Area (HPSA)* An area defined by the Department of Health and Human Services as having a shortage of health care providers.

*J-1 Physician* An international medical graduate physician completing graduate medical education in the United States under a J-1 Visa. These physicians are required to return to their country of nationality for at least two years before reentering the United States *unless a J-1 Visa waiver is granted.*

*Medically Underserved Area* An area, as defined by the Department of Health and Human Services, as not having an adequate supply of health care providers.

*Practice Site* Actual physical location at which the J-1 physician will provide medical services. This location can be different from the sponsoring site location if, for example, a satellite office is used.

*Primary Care Fields* The following four fields are identified as primary care: family practice, general internal medicine, general pediatrics and obstetrics/gynecology

*Recruitment Contact* Primary point of contact to be used by Delaware Health and Social Services Conrad State 20 Program Manager.

*Service Area* Geographic area in closest proximity to the practice site, from which the majority of patients are derived.

*Sponsoring Site* Medical practice through which the J-1 physician will provide medical services (i.e. the hiring organization).

APPENDIX A  
CONRAD STATE 20/J-1 VISA WAIVER SITE  
APPLICATION FORMS

**I. SITE APPLICATION FORM**

1. Sponsoring Site: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Non-Profit: \_\_\_\_\_ For Profit: \_\_\_\_\_
2. Practice Site: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_
3. Recruitment Contact: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_
4. Site Data Regarding Active Clients:



# PROPOSED REGULATIONS

Total Number of Patients Receiving the Following Medical Services:

Primary Health Care: \_\_\_\_ Specialty Care: \_\_\_\_  
 Mental Health Care: \_\_\_\_ Total: \_\_\_\_

Total Users in Previous Calendar Year Below 200% of Federal Poverty Level: \_\_\_\_

AGE GROUP	MEDICAID	MEDICARE	SLIDING FEE SCALE	COMMERCIAL
Birth - 11 Years	%	%	%	%
12- 18 Years	%	%	%	%
19-62 Years	%	%	%	%
63+ Years	%	%	%	%
HPSA %	%	%	%	%
NOT HPSA %	%	%	%	%

5. Staffing Levels

AREA OF PRACTICE	STAFFING LEVEL		NUMBER OF PHYSICIANS REQUESTED	J-1	PROJECTED HIRE DATE			
	FULL	CURRENT			JUNE - AUG 2000	SEPT - NOV 2000	DEC - FEB 2000	MARCH - MAY 2000
<b>PRIMARY CARE PHYSICIANS</b>								
Family Practice								
General Internal Medicine								
General Pediatrics								
Obstetrics/Gynecology								
<b>SPECIALIST PHYSICIANS (Please Specify Specialty Area)</b>								
<b>NURSE PRACTITIONERS</b>								
Family Nurse Practitioners								
Adult Nurse Practitioners								
Geriatric Nurse Practitioners								
Pediatric Nurse Practitioners								
Women's Health Nurse Practitioners								
Psychiatric Nurse Practitioners								
<b>OTHER DISCIPLINES</b>								
Physician Assistants								
Nurse Midwives								
Clinical Psychologists								
Clinical Social Workers								
Psychiatric Nurse Specialist								
Marriage and Family Therapists								

6. Practice Site Hours of Operation.

If hours of operation vary by practitioner, please specify.

DAY	TIME (Start and End)		TOTAL HOURS
	AM:	PM:	
Monday			
Tuesday			
Wednesday			
Thursday			
Friday			
Saturday			
Sunday			

7. Proposed J-1 Physician Weekly Work Schedule:

DAY	TIME (Start and End)		WHERE (Hospital/Practice Site)	TOTAL HOURS
	AM:	PM:		
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				

Provide a separate work schedule for each J-1 physician requested and specify the specialty of each.

**II. NEEDS ASSESSMENT**

Please use additional paper to complete this section.

1. Description of the service area in which the sponsoring site's patients are located:
2. Geographic Service Area Health Care Resource Inventory

Practice Site	Specialty	Hospital Hours? Y/N	Total Office Hours Per Week	Accept Medicaid ? Y/N	% Medicaid	Accept New Patients ? Y/N	Sliding Scale? Y/N	% Charity Care

Include all medical services available in the service area for which the J-1 physician will be practicing.

NEAREST AVAILABLE SITE PROVIDING SERVICES SIMILAR TO PROPOSED J-1 PRACTICE SITE (INCLUDE COMPLETE NAME AND ADDRESS)	MILES TO NEAREST SITE	TRAVEL TIME TO NEAREST SITE (using public transportation)

3. Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA) Documentation.

HPSA Y/N Location: \_\_\_\_\_  
 MUA Y/N: Location: \_\_\_\_\_  
 Sponsoring Site's Primary Service Area (City, County, Zip Code & Census Tract) \_\_\_\_\_

4. Documentation of a shortage in the defined service area for the particular physician specialty being requested under the J-1 Visa Waiver Program.

- a) Provide statistics demonstrating the specialty/sub-specialty is greatly needed in the sponsoring site's service area.
- b) Document that the specialty/sub-specialty is not currently available to sufficiently meet the need in the service area for the underserved population.
- c) Describe how a J-1 physician will be used to meet the underserved population needs in the service area; indicate if unique qualifications, such as language/cultural match or experience with a population similar to those in the service area, are sought to meet a particular need.

**III. RETENTION**

Describe the short and long-range plan for the retention of a J-1 physician beyond the required three-year obligation. Please use additional paper.

**IV. PROOF OF FAILED RECRUITMENT ATTEMPTS**

DATE	METHOD OF RECRUITMENT	RESPONSE	REASON FOR DISCONTINUING METHOD

**V. LETTERS OF SUPPORT**

Attach original, signed letters from two separate community members and/or leaders in the practicing site's service area. Attach one original, signed letter from an approved local Public Health official (see Appendix B for an approved contact list).

**VI. SPONSORING SITE WAIVER AGREEMENT**

Delaware Health and Social Services (DHSS) is committed to ensuring that all residents have access to quality, affordable health care. Accordingly, DHSS is prepared to consider recommending a waiver of the foreign residence requirement on behalf of physicians holding J-1 Visas under certain conditions. Therefore, the additional requirements are deemed necessary to support our Conrad State 20/J-1 Visa Waiver Program.

The director or applicant official for the facility or practice **must initial all** of the following requirements:

\_\_\_\_\_ Sponsoring site agrees to comply with all of the Program requirements set forth in this Agreement and guidelines.

\_\_\_\_\_ The sponsoring site is located in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA), as designated by the Secretary of Delaware Health and Human Services.

\_\_\_\_\_ The J-1 physician will provide medical care for at least forty (40) hours a week at the HPSA or MUA site named in the application for a minimum of three (3) years. Travel or on-call time is not included in the required forty (40) hours.

\_\_\_\_\_ The sponsoring site agrees to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services, or (b) payment for those health services will be made under Medicaid and Medicare. The sponsoring site will charge persons receiving services at the usual and customary rate prevailing in the HPSA/MUA in which services are provided, except charges will be on a sliding scale for persons at or below 200 percent of poverty or at no charge for persons unable to pay for these services.

\_\_\_\_\_ The sponsoring site has made a reasonable, good faith effort to recruit a physician with United States citizenship for the job opportunity in the same salary range without success during the last 6 months immediately preceding this request for a waiver. Recruitment efforts were through a number of appropriate sources most likely to bring responses from able, willing, qualified and available physicians with United States citizenship.

\_\_\_\_\_ I understand and acknowledge that the review of this site application is discretionary and that in the event a decision is made not to approve the site application, I hold harmless the State of Delaware, DHSS and any and all State employees and/or any and all individuals or organizations involved in the review process from any action or lack of action made in connection with this request.

#### VII. SIGNATURE

Signature of Applicant Official: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

#### APPENDIX B

#### CONRAD STATE 20/J-1 VISA WAIVER J-1 PHYSICIAN APPLICATION LETTER OF SUPPORT CONTACT LIST

The following are approved public health officials to contact to obtain a letter of support to include with the J-1 Visa Waiver Site Application. If the practice site is located in New Castle County, please contact Shirlee Kittleman. If

the practice site is located in Kent or Sussex Counties, please contact Barbara DeBastiani.

#### Northern Health Services

**Shirlee Kittleman,  
Administrator**

2055 Limestone Road,  
Suite 300

Wilmington, DE 19808

Phone: (302)995-8632

Fax: (302)995-8616

#### Southern Health Services

**Barbara DeBastiani,  
Administrator**

Sussex County Health Unit  
544 South Bedford Street

Georgetown, DE 19947

Phone: (302)856-5355

Fax: (302)856-5065

#### APPENDIX C

#### CONRAD STATE 20/J-1 VISA WAIVER J-1 PHYSICIAN APPLICATION FORMS

#### J-1 VISA WAIVER REQUEST DOS PHYSICIAN DATA SHEET

1. FULL NAME: \_\_\_\_\_
2. DATE OF BIRTH: \_\_\_\_\_ PLACE OF BIRTH: \_\_\_\_\_
3. COUNTRY OF NATIONALITY OR LAST LEGAL PERMANENT RESIDENCE: \_\_\_\_\_
4. DATE AND PLACE OF ISSUANCE OF ORIGINAL EXCHANGE-VISITOR (J-1) VISA: \_\_\_\_\_
5. PRESENT HOME ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
- IMMIGRATION DISTRICT: \_\_\_\_\_
6. HOME TELEPHONE: \_\_\_\_\_  
BUSINESS TELEPHONE: \_\_\_\_\_
7. LIST OF EXCHANGE-VISITOR PROGRAMS IN WHICH YOU PARTICIPATED. IF KNOWN, GIVE THE PROGRAM NUMBER AND THE FIELD OF SPECIALIZATION: \_\_\_\_\_  
\_\_\_\_\_
8. ALIEN REGISTRATION NUMBER, IF KNOWN: \_\_\_\_\_
9. IF YOUR EXCHANGE-VISITOR PROGRAM INCLUDES US GOVERNMENT FUNDS, FUNDS FROM YOUR OWN GOVERNMENT, OR FROM AN INTERNATIONAL ORGANIZATION. PLEASE GIVE FULL PARTICULARS CONCERNING THE FUNDING ON A SEPARATE SHEET.
10. IS YOUR SPOUSE IN J-1 STATUS? YES \_\_\_ NO \_\_\_  
IF SO, IS HE/SHE ALSO APPLYING FOR A WAIVER? (PLEASE GIVE A FULL EXPLANATION ON A SEPARATE SHEET)
11. GIVE THE REASONS FOR NOT WISHING TO FULFILL THE TWO YEAR HOME COUNTRY RESIDENCE REQUIREMENT TO WHICH YOU AGREED AT THE TIME YOU ACCEPTED EXCHANGE VISITOR STATUS. PLEASE GIVE A FULL EXPLANATION ON A SEPARATE SHEET.
12. PLEASE INCLUDE COPIES OF ALL IAP-66 FORMS ISSUED DURING YOUR STAY IN THIS

COUNTRY.

\_\_\_\_\_  
SIGNATURE OF J-1 PHYSICIAN APPLICANT  
DATE  
J-1 PHYSICIAN WAIVER STATEMENTS  
DECLARATION OF PENDING INTERESTED  
GOVERNMENT AGENCY

I, \_\_\_\_\_, hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that I do not now have pending nor am I submitting during the pendency of this request, another request to any United States Government agency or any State Department of Public Health, or equivalent, other than the Delaware Health and Social Services to act on my behalf in any matter relating to a waiver of my two-year-home-country physical presence requirement.

\_\_\_\_\_  
Physician Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician Name (Printed or Typed)

#### MEDICAL LICENSE AFFIDAVIT

I, \_\_\_\_\_, hereby affirm that, to the best of my knowledge, my medical license has never been suspended or revoked and that I am not subject to any criminal investigation or proceedings by any medical authority.

\_\_\_\_\_  
Physician Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician Name (Printed or Typed)

#### J-1 PHYSICIAN WAIVER AFFIDAVIT AND AGREEMENT

I, \_\_\_\_\_, being duly sworn, hereby request the Delaware Health and Social Services (DHSS) to review my application for the purpose of recommending waiver of the foreign residency requirement set forth in my J-1 Visa, pursuant to the terms and conditions as follows:

1. I understand and acknowledge that the review of this request is discretionary and that in the event a decision is made not to grant my request, I hold harmless the State of Delaware, DHSS, any and all State employees and/or any and all individuals or organizations involved in the review process from any action or lack of action made in connection with this request.

2. I further understand and acknowledge that the entire basis for the consideration of my request is DHSS's mission to improve the availability of medical care in areas designated as Health Professional Shortage Areas (HPSA) and Medically Underserved Areas (MUA) by the Secretary of the Department of Health and Human Services.

3. I understand and agree that in consideration for a waiver, which may or may not be granted, I shall render medical care services to patients, including the underserved, for a minimum of forty (40) hours per week with a designated HPSA or MUA in Delaware. Such service shall commence not later than three months (90 days) after I receive notification of approval by the United States Immigration and Naturalization Services (INS) and shall commence for a minimum of three (3) years as required by State policy guidelines.

4. I have incorporated all terms of this Physician J-1 Visa Waiver Affidavit and Agreement into the executed employment contract attached to this request.

5. I further agree that my executed employment contract with the sponsoring site does not contain any provision which modifies or amends any terms of the Program guidelines for Delaware and this Physician J-1 Visa Waiver Affidavit and Agreement.

6. I agree to provide health care services to Medicare, Medicaid and medically underserved patients, without discrimination based upon ability to pay for such services (i.e. self-pay, sliding fee scale, charity care).

7. I agree to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services or (b) payment for those health services will be made under Medicaid and Medicare. I will charge persons receiving services at the usual and customary rate prevailing in the HPSA or MUA in which services are provided, except charges will be on a sliding scale for persons at or below 200 percent of poverty or at no charge for persons unable to pay for these services.

8. I understand I must submit a "No Objection" letter if my home country's government funded my graduate medical education.

9. I have not been "out of status" (as defined by the Immigration and Naturalization Service of the United States Department of Justice) for more than six (6) months since receiving a visa under 8 U.S.C. 1182 (j) of the Immigration and Nationality Act, as amended.

10. I understand the Declaration of Pending Interested

Government and Medical Licensure Affidavit and signed both statements.

11. I expressly understand I am to provide written notification of the specific location and nature of my practice to DHSS at the time I receive notification from INS and I commence rendering services in the HPSA or MUA. I further understand and agree that my relocation from a site approved in the application request to a new site must be approved by DHSS in writing prior to the move.

12. I understand that if I fail to fulfill the terms of my employment contract with the sponsoring site named in this application, I become subject to the two-year foreign residence requirement, and am ineligible to apply for an immigrant visa, permanent residence, or any other change of immigrant status until the two-year foreign residence requirement is met.

13. I expressly understand and acknowledge the scope of the Delaware Conrad State 20/J-1 Visa Waiver Program guidelines and all the information contained in my application request submitted by \_\_\_\_\_ on my behalf.

14. I understand that I am responsible for ensuring that annual reporting requirements are met by myself and my employer in a timely manner in accordance with the Delaware Conrad State 20/J-1 Visa Waiver Program procedures. I agree to fully cooperate with and participate in an exit interview within 90 days prior to completing my three-year practice obligation.

I declare under penalties of perjury that all the information provided to DHSS for the purposes of determining whether it will act as an "Interested Government Agency" is true and correct.

\_\_\_\_\_  
J-1 Physician Signature Date

\_\_\_\_\_  
J-1 Physician Name (Printed or Typed)

Subscribed to and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature Date

**J-1 VISA WAIVER APPLICATION CHECKLIST**

The requesting J-1 physician applicant must initial that each required enclosure has been included in the application

package for review by the Delaware Health and Social Services.

- \_\_\_\_\_ DOS Physician Data Sheet
- \_\_\_\_\_ All IAP-66 Forms and INS Forms 1-94
- \_\_\_\_\_ No Objection Letter (If Required)
- \_\_\_\_\_ Physician Curriculum Vitae
- \_\_\_\_\_ Three (3) Letters of Recommendation
- \_\_\_\_\_ Copy of All Residency/Fellowship Certificates
- \_\_\_\_\_ Copy of Delaware Medical License (Or Proof of Eligibility)
- \_\_\_\_\_ Copy of Board Eligibility/Certification
- \_\_\_\_\_ Executed Employment Contract

**APPENDIX D  
CONRAD STATE 20/J-1 VISA WAIVER  
SITE APPLICATION EVALUATION WORKSHEET**

Review Element	Possible Weight	Assigned Points
1. Site Application Documentation:	25	
Site data regarding active clients	15	
Staffing levels	5	
Practice site hours of operation	5	
2. Needs Assessment Total:	35	
Description of geographic service area	10	
Geographic service area health resource inventory	5	
Documentation of primary care or specialty shortage	20	
3. Retention:	15	
Documents short-term plan to retain J-1 physician	5	
Documents long-term plan to retain J-1 physician at the end of the three-year obligation.	10	
4. Proof of Failed Recruitment		
Attempts:	15	
Documented proof of failed attempts to recruit	15	
5. Letters of Support:	10	
Two letters of support from community members and/or leaders in the practice site's service area indicate the benefits of, or need for, the placement of a J-1 physician.	5	
One letter from a local public health official indicates the benefits of, or need for, the placement of a J-1 physician.	5	
<b>Total</b>	<b>100</b>	

APPENDIX E  
CONRAD STATE 20/J-1 VISA WAIVER  
ANNUAL PRACTICE REPORT

1. Name of J-1 Physician: \_\_\_\_\_  
Start Date: \_\_\_\_\_
2. Sponsoring Site: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Non-Profit: \_\_\_\_\_ For Profit: \_\_\_\_\_
3. Practice Site: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_
4. Contact Person: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

Type of Service(s) Provided:

Please provide the medical specialties practiced by the J-1 physician, the total hours he/she worked in each specialty and the number of annual visits performed by this physician for each specialty practiced (include all primary care and other medical specialties).

Practice Type	Total Hours/Week	Annual Visits

J-1 Physician's Hours of Operation:

Indicate the weekly work schedule of the J-1 physician. Include the number of hours (with start and end times) and the primary location (hospital/practice site). The schedule must indicate the time the J-1 physician is actually providing services; do not include travel or on-call time. If the J-1 physician is practicing at more than one location, please complete a schedule for each location.

DAY	TIME		TOTAL HOURS
	(Start and End)		
Monday	AM:	PM:	
Tuesday	AM:	PM:	
Wednesday	AM:	PM:	
Thursday	AM:	PM:	
Friday	AM:	PM:	

Saturday	AM:	PM:	
Sunday	AM:	PM:	

Site Data Regarding Active Clients:

Provide the total number of active patients at the practice site in the previous calendar year with totals, as applicable, for primary care, specialty care and mental health services.

Total Number of Patients Receiving the Following Medical Services:

Primary Health Care \_\_\_\_\_ Specialty Care \_\_\_\_\_ Mental Health Care \_\_\_\_\_ TOTAL \_\_\_\_\_

Total Users in Previous Calendar Year Below 200% of Federal Poverty Level \_\_\_\_\_

Please provide a breakdown of each of the following payor types by age of patient.

AGE GROUP	MEDICAID	MEDICARE	SLIDING FEE SCALE	COMMERCIAL
Birth - 11 Years	%	%	%	%
12- 18 Years	%	%	%	%
19-62 Years	%	%	%	%
63+ Years	%	%	%	%

This will certify that \_\_\_\_\_ (name of J-1 physician) provided medical services to patients at the approved health facility site on a full-time basis (minimum forty hour per week) for the time period of \_\_\_\_\_ through \_\_\_\_\_.

Signature of Applicant Official: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

**PUBLIC NOTICE**

**Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility policy manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 1999.

#### 13444 Qualified Medicare Beneficiaries (QMB)

Effective January 1990, Delaware began to pay Medicare co-insurance and deductible amounts for Medicare beneficiaries with income that does not exceed less than 100% of poverty. and resources up to two times the SSI program resource standard.

#### 13445 Specified Low Income Medicare Beneficiaries (SLMB)

Beginning January 1, 1993, Medicaid will pay the Medicare Part B premium for these individuals who have income that does not exceed 120% of poverty. ~~and who have resources that do not exceed twice the SSI standard.~~ They do not receive any Medicaid services.

#### 13447 Qualifying Individuals

Two new mandatory eligibility groups of low income Medicare beneficiaries were established by the Balanced Budget Act of 1997. The first group (QI-1s) have income between 120% and 135% of FPL and are eligible to have their Part B premiums paid by Medicaid. The second group (QI-2s) have income between 135% and 175% of FPL and receive a direct payment from Medicaid for the small portion of Part B premium that was transferred from Part A. ~~Resources for both QI-1s and QI-2s must not exceed twice the SSI resource standard.~~ Funding for these groups come out of the Medicare Trust fund and are not out of Medicaid's federal funding. The state receives 100% FFP for the premiums for these groups.

#### 17300 Qualified Medicare Beneficiaries

A Qualified Medicare Beneficiary (QMB) is someone who is entitled to hospital insurance benefits under Part A Medicare and whose income does not exceed the Federal Poverty Level. ~~and whose resources are at or below twice the SSI resource standard.~~ All resources of the applicant and spouse are excluded when determining eligibility.

QMB's qualify for Medicaid to pay their Medicare Part A and B premiums, deductibles, and co-insurance expenses. They do not receive any Medicaid services.

This category of eligibles is mandated for coverage by the Medicare Catastrophic Coverage Act of 1988 (MCCA). Delaware Medicaid implemented the program effective 1/1/90. The eligibility and benefits are not retroactive.

#### 17300.3.2.5 Unearned Income

Unearned income is income that is paid because of a legal or moral obligation rather than for work activity performed. It is all income that is not earned income. This

includes Social Security, Railroad Retirement, pensions, benefits, ~~interest, dividends,~~ alimony, child support and other types of payments. Interest and dividend income is excluded.

Rental income is unearned unless the rental proceeds are ordinary income of a trade or business being carried on by a self-employed individual, such as a real estate broker.

See the Long Term Care Section for more information on determining net rental income and more types of unearned income. (DSSM 20000 )

#### 17300.3.3 Resources

~~The resource limit is twice the SSI (Supplemental Security Income) limit. The couple limit is used even if one spouse is ineligible for Medicare. Federal regulations mandate that in determining resources we must use the methodologies used in the SSI program. We will follow these basic guidelines in determining resources:~~

~~The term "resources" means things a person owns. It includes real estate and personal property, such as cash, savings and checking accounts, certificates of deposit, stocks and bonds, life insurance, and other assets that can be applied to meet a person's needs for food, clothing, or shelter.~~

~~The total value of resources owned by either spouse counts toward the resource limit.~~

#### 17300.3.3.1 Excluded Resources

~~Following are some of the most common items that are excluded in determining the amount of a person's resources for QMB purposes:~~

~~1. A home (and adjacent land) which a person owns and makes his or her principal place of residence, regardless of its value.~~

~~2. Personal effects and household goods.~~

~~3. A car, regardless of value, if for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's home):~~

~~a) it is necessary for employment,~~

~~b) it is necessary for medical treatment of a specific or regular medical problem,~~

~~c) it is modified for operation by or transportation of a handicapped person, or~~

~~d) it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.~~

~~NOTE: Only one car may be excluded per married couple.~~

~~4. Jointly owned vehicle if co-owner refuses to sell~~

~~5. Life insurance policies with a total face value of \$1,500 or less per person.~~

~~6. Burial plots or spaces regardless of value, if intended for use by a person or his or her immediate family.~~

~~7. Burial funds set aside for an individual or his/her spouse, up to \$1,500 each.~~

~~8. Any resources that were transferred or given away. Transfer of Assets Policy applies only to institutionalized applicants and recipients.~~

~~NOTE: Please see the Long Term Care Section for further explanation of countable resources, excluded resources, burial resources, property ownership and conditional benefits while attempting to sell a resource. (DSSM 20000)~~

#### 15430 Adoption Subsidy Children

Section 9529 of P.L. 99-272, the Consolidated Omnibus Reconciliation Act of 1985, permits states to extend Medicaid services to children with special medical or rehabilitative needs whose adoptive families are receiving a subsidy under a state (non-IV-E) adoption agreement.

Effective 7/1/87, the Delaware Medicaid program added coverage for state-funded adoption subsidy children. Eligibility criteria are:

1) Must have an adoption assistance agreement in effect with DSCYF. Children coming into Delaware must have an adoption assistance agreement in effect with the former state.

2) Must receive a medical/psychological subsidy from DSCYF.

3) Must have been Medicaid eligible prior to adoption assistance agreement.

#### 18700.5 Cancellation of Coverage for Nonpayment of Premiums

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. A notice of cancellation will be sent to the family advising the family to report any change in circumstances, such as a decrease in income, that may result in eligibility for Medicaid. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. ~~Families who are cancelled for nonpayment of premiums cannot reenroll for six months from their coverage end date. There is no automatic reenrollment at the end of the six month cancellation period. The family must initiate reenrollment and must pay an initial premium.~~ Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty, with the reenrollment period starting with the first month for which the premium is paid.

Eligibility redeterminations will be processed without regard to the families' enrollment status.

#### 20100 LONG TERM CARE INTRODUCTION

There are three major programs under LTC Medicaid:

Nursing Home Program

Long Term Acute Care Program

HCBS Waiver

Elderly and Disabled Waiver

Aids Waiver

Mental Retardation Waiver

Assisted Living

#### 20700 HOME AND COMMUNITY BASED SERVICES

Delaware currently has a waiver for the mentally retarded (effective 7/1/83), the elderly and disabled (effective 7/1/86) and effective (1/1/91) persons with Acquired Immune Deficiency Syndrome (AIDS) or other HIV-Related Disease (HRD). The Assisted Living Waiver which is a program of community based residential services became effective October 1, 1998.

#### 20700.4 ASSISTED LIVING WAIVER

The Assisted Living Medicaid Waiver Program (ALMWP) provides community based residential services. The program is administered by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The program is funded by Delaware Medicaid and state general funds. It is targeted to older persons and adults with physical disabilities who need assistance with the Activities of Daily Living (ADL) AND meet Medicaid nursing home admission criteria.

#### 20700.4.1 ELIGIBILITY CRITERIA

To be eligible for this program, individuals must:

Be a resident of the State of Delaware

Be eighteen years of age or older;

Meet the Financial and Medical criteria for DSS

Long Term Care Institutionalized Services

Meet Assisted Living Program criteria as determined by DSAAPD

Medical eligibility is determined by Pre Admission Screening Units of either DSS or DSAAPD.

Financial eligibility is determined by the DSS Long-Term Care Financial Units.

Program eligibility is determined by DSAAPD. An individual **must** meet the following criteria:

Have need of an assisted living service on a regular weekly basis; AND

Be able to be maintained safely in the assisted living facility with the provision of the ALMWP services. Safety concerns must be brought to resolution through a mutually agreed upon Managed Risk Agreement.

If the financial eligibility determination period has expired, and the individual has been unable to obtain placement in a suitable and acceptable assisted living facility, the application will be denied.



**20700.4.2 NUMBER OF RECIPIENTS**

There is a maximum number of individuals who may be served under the Assisted Living Medicaid Waiver each fiscal year. The total unduplicated number of recipients served under the program within the year cannot exceed the maximum number as approved by the Health Care Financing Administration (HCFA). DSAAPD monitors the number of individuals receiving ALWP services so the maximum number will not be exceeded.

**20700.4.3 COST EFFECTIVE REQUIREMENT**

In order for an individual to be eligible for the Assisted Living Program, the individual's cost of care cannot exceed the cost of their care if the same individual was institutionalized. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on Assisted Living eligibles. A DSAAPD worker determines the cost effectiveness.

**20700.4.4 DAYS APPROPRIATE FOR BILLING**

The assisted living provider may NOT bill MEDICAID for room and board. The assisted living provider may bill for services for any day that the recipient is present in the facility for any part of the day. The assisted living provider may NOT bill for any day that the consumer is absent from the facility for the entire day. An entire day is a 24 hour period from 12:00 Midnight to 11:59 PM.

**20700.4.5 ILLNESS OR HOSPITALIZATION**

The assisted living provider shall NOT provide services for an individual who has been bedridden for 14 consecutive days unless a physician certifies that the consumer's needs may be safely met by the service agreement. There is no 14 day bedhold day Medicaid payment for hospitalization (DSSM 20650) as available for nursing facility residents.

**20700.4.6 APPROVAL**

Upon approval the Medicaid Financial Unit will send a notice of acceptance to the applicant or his representative, and ALMWP provider. The notice to the provider will include patient pay amount, amount to be protected for medical insurance and personal needs, effective date of Medicaid coverage, and Medicaid recipient's billing ID number.

**20700.4.7 POST ELIGIBILITY BUDGETING**

See DSSM 20720 for Patient Pay Calculation policy. If the consumer has income under the Adult Foster Care standard, there will be no patient pay amount. Collection of the patient pay amount from the consumer or his representative is the responsibility of the Assisted Living provider.

**20700.4.8 ASSISTED LIVING SERVICES**

Assisted living services include the following:

Personal services assistance with the activities of daily living (ADL)

Nursing services

Meal services

Social/emotional services

Assistance with instrumental activities of daily living (IADL)

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

**PUBLIC NOTICE****Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Durable Medical Equipment Provider Manual, the General Policy Manual, Practitioner Provider Manual and the Pharmacy Provider Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 1999.

**Durable Medical Equipment Provider Manual**

~~Enteral Nutrition Therapy Supplies~~

Enteral Nutrition

"Enteral nutrition is considered reasonable and necessary for a patient with a functioning gastrointestinal tract who, due to pathology to or non-function of the structures that normally permit food to reach the digestive tract, cannot maintain weight and strength commensurate with his or her general condition. Enteral nutrition may be given by nasogastric, jejunostomy, or gastrostomy tubes, and can be provided safely and effectively in the home by nonprofessional persons who have undergone special training". (Medicare's National Level II Codes, 1999) is the administration into the gastro-intestinal tract of calories, nitrogen and/or other nutrients to achieve tissue synthesis and anabolism for patients requiring medically prescribed defined formula and

liquid diets. The DMAP covers enteral nutrition therapy supplies when the patient has a malfunctioning or non-functioning gastro-intestinal tract, or medical condition where oral feeding is contraindicated. Patients who can obtain nutrition orally will not be approved for these supplies, with the following exceptions:

- Individuals with birth defects, cerebral palsy, cystic fibrosis, metabolic diseases, or other medical conditions which prevent them from obtaining sufficient nutrition from a normal diet.
- pregnant women with phenylketonuria (PKU).
- failure to thrive documentation must be attached that details the diagnosis of failure to thrive.

When submitting a request for enteral nutrition the DME provider is required to complete and attach a Certification for Food Supplementation Form to the CMN. This form must clearly document the relationship between the medical diagnosis and the need for the enteral therapy. A copy of this form may be found in APPENDIX C. It is not necessary for the practitioner to sign the Food Supplement Form.

The DMAP will reimburse for no more than a one month supply of enteral nutrients and enteral supplies for any one billing period.

If more than one nutrient in the same class is prescribed for the same period of service, these items must be combined on one line when billing. Failure to combine the items will result in a denial of the additional claims as duplicates.

The attending practitioner must certify the need for enteral therapy supplies at least every six months. In addition, any changes in prescription will require authorization with medical documentation of the need for change.

#### Parenteral Nutritional Therapy Supplies

“Daily parenteral nutrition is considered reasonable and necessary for a patient with severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the patient’s general condition”. (Medicare’s National Level II Codes, 1999)

Total parenteral nutrition (TPN) is considered reasonable and necessary for a patient when the oral route is unavailable owing to surgery or obstruction, when oral intake is inadequate, and when peripheral infusion of nutrients cannot meet the patient’s needs.

Total parenteral nutrition (TPN) is the intravenous administration of sterile preparation of calories, nitrogens and/or other nutrients used in the diagnosis, cure, mitigation, or treatment of disease to achieve tissue synthesis and anabolism. The DMAP covers parenteral (infusion)

nutritional therapy supplies for patients with conditions that cannot be managed with oral therapy and who do not need the supportive services of an in-patient setting. Items requiring a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

When submitting a request for parenteral nutrition supplies the DME provider is required to complete the CMN utilizing appropriate Local Codes used for Infusion Therapy Supplies in Appendix A. The DME provider is also required to attach the physician’s care plan to the CMN. Items that require a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

The DMAP will reimburse for no more than a one month supply of parenteral therapy supplies for any one billing period.

The attending practitioner must certify the need for parenteral therapy supplies at least every 6 months. In addition, any changes in prescription will require authorization with medical documentation of the need for change.

#### Oral Nutrition

Oral nutrition is considered reasonable and necessary for a patient who requires supplementation of their daily protein and caloric intake.

Patients who can adequately obtain nutrition orally will not be approved for nutrition therapy with the following exceptions:

- Pregnant women with phenylketonuria (PKU).
- Failure to thrive - documentation must be attached that details the diagnosis of failure to thrive.
- Individuals with birth defects, cerebral palsy, cystic fibrosis, metabolic diseases, or other medical conditions that prevent them from obtaining sufficient nutrition from a normal diet.

When submitting a request for oral nutrition the DME provider is required to complete and attach a Certification for Food Supplementation Form to the CMN. In addition, a physician’s letter of medical necessity and prescription for a specific formula that includes calories per day are required when requesting authorization for oral nutritional supplement. The letter must document the primary diagnosis and any other related medical conditions that prevent the individual from obtaining sufficient nutrition from a normal diet and must include the following, as appropriate:

- Physical findings: Height, Weight and Ideal Body Weight or Body Mass Index. Explanation of weight loss with specific dates and measurements. Other physical examination findings.
- Significant laboratory data (for example, Serum

- Albumin)
- Discussion of any risk factors found related to undernutrition in any of the following areas: clinical features, eating habits, living environment, functional status, mental/cognitive status
- Explanation of previous related treatment measures with results

## Intravenous Drug Therapy Supplies

Intravenous drug therapy is the administration of sterile preparations of medications and fluids. The DMAP covers intravenous drug therapy supplies when deemed medically necessary by the attending practitioner. The DME provider is required to complete the CMN utilizing appropriate Local Codes Used For Infusion Therapy Supplies in Appendix A. Items requiring a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

## General Policy Manual

### Delaware Prescription Assistance Program (DPAP)

The Delaware Prescription Assistance Program (DPAP) provides payment assistance for prescription drugs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources. The program is administered by the fiscal agent under contract with the State.

To be eligible for this program a person must:

- be a U.S. citizen or a lawfully admitted alien;
- have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;
- be a resident of the State of Delaware;
- be ineligible for Medicaid prescription benefits;
- be ineligible for Nemours Health Clinic Pharmaceutical benefit;
- be ineligible for and/or not receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit; and
- be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible for benefits under Title II of the Social Security Act.

Prescription drugs covered under the Program are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing DMAP limitations. Services covered are generic and brand name FDA-approved and other legal prescription drugs, as well as cost effective over-the-counter drugs

prescribed by a physician. Necessary diabetic supplies not covered by Medicare will also be covered.

Payment assistance shall not exceed \$2,500 per State fiscal year to assist each eligible person in the purchase of prescription drugs. There will be a co-payment of \$5 or 25% of the cost of the prescription, whichever is greater. The pharmacy will collect the co-payment before the prescription is dispensed.

## Services Requiring Prior Authorization

### Pharmaceuticals

Certain pharmaceuticals require prior authorization. For further information refer to the Pharmacy or Practitioner Provider Specific Policy Manual.

### Categorically Eligible

#### Who is Eligible

The following individuals/families may be eligible for Medicaid in Delaware as categorically eligible if they meet certain low income and resource requirements:

- Anyone who gets a benefit from Aid to Families with Dependent Children (AFDC), Aid to the Unemployed (AU), Supplemental Security Income (SSI) or State Supplemental Payments (SSP).
- People needing nursing facility care whether living in a medical facility or at home and receiving waiver services for the mentally retarded, the elderly/disabled, ~~or~~ persons with HIV/AIDS, or persons eligible for the Assisted Living Medicaid Waiver Program.

## Practitioner Provider Manual

### Pharmacy Services

#### Prior Authorization Requirements for Medications

Medications may be prior authorized if one of the following issues is present:

- medical necessity is lacking or is not clearly evident;
- potential for diversions, misuse and abuse;
- high cost of care relative to similar therapies;
- experimental use opportunity; and
- drug classes where the potential for not keeping within the policy guidelines of the DMAP are identified.

The pharmacy provider or the practitioner can initiate

the request for prior authorization. Requests will be evaluated within one business day by Medicaid's pharmacy consultant or medical director. If required, one 2 hour emergency supply can be dispensed until a decision is made.

The Drug Utilization Review Board will make decisions regarding the medications that will require prior authorization and the criteria to be used. Prior authorization will be based on duration of therapy, quantity, or a combination of both depending on the medication requested. Refer to Appendix M for specific criteria for prior authorization.

#### Drug Rebate Programs

For the Medicaid (Title XIX) population including the Diamond State Health Plan (DSHP) managed care eligibles, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the HCFA rebate agreement.

For the Delaware Health Children Program (DHCP), the Chronic Renal Care Program, the State Program for Non-Qualified, Non-Citizens, and the Delaware Prescription Assistance program, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to participate in the State Rebate Program.

### **Pharmacy Manual**

### III. LIMITATIONS

#### Drug Rebate Programs

For the Medicaid (Title XIX) population including the Diamond State Health Plan (DSHP) managed care eligibles, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the HCFA rebate agreement.

For the Delaware Health Children Program (DHCP), the Chronic Renal Care Program, the State Program for Non-Qualified, Non-Citizens, and the Delaware Prescription Assistance program, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to participate in the State Rebate Program.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR AND WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. 6010)

#### **Register Notice**

1. Title of the Regulations:  
**Regulation 36 - Acid Rain Program**
2. Brief Synopsis of the Subject, Substance and Issues:  
Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, authorized the EPA to establish the Acid Rain Program to reduce the adverse health and ecological effects of acid deposition. Delaware's Regulation No. 36 adopted the provisions of the Acid Rain Program by reference, specifically citing the provisions of Parts 72 through 78 of Title 40 of the Code of Federal Regulations, dated July 1, 1995. Subsequent to that date, EPA has amended portions of Parts 72 through 78 of Title 40. The purpose of this rulemaking is to adopt the provisions of Parts 72 through 78 of Title 40 of the Code of Federal Regulations, dated July 1, 1999. Significant revisions between the July 1, 1995 and July 1, 1999 versions of Parts 72 through 78 include:  
Parts 72 and 73 - Improving the operation of the Allowance Tracking System while preserving the Clean Air Act's environmental goals.  
Parts 72, 73, 74, 75, 77, and 78 - Improving and streamlining the permitting, excess emissions, and appeal procedure rules in order to reduce the burden on utilities, permitting authorities, and the EPA while still ensuring reduction of sulfur dioxide and nitrogen oxide emissions.  
Part 74 - Clarify and revise existing rules to promote participation in the Title IV opt-in program for units that are not otherwise required to participate in the Title IV program.  
Part 75 - Clarify existing rules and provide increased implementation flexibility for affected entities. The revisions resolve certain monitoring issues as part of settlement agreements related to the original rulemaking, and addresses new issues raised by experience during the first three years of implementation of the Part 75 monitoring requirements.  
Part 76 - Establishes nitrogen oxides (NOx) emissions limitations for certain coal-fired electric utility units and revises NOx emissions limitations for certain other coal-fired electric utility units.
3. Possible Terms of the Agency Action:  
None

4. Statutory Basis or Legal Authority to Act:  
7 Delaware Code, Chapter 60
5. Other Regulations That May Be Affected by the Proposal:  
None
6. Notice of Public Comment:  
A public hearing on this regulation will be held on Tuesday, November 30, 1999, at 6:00 P.M. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.
7. Prepared by: Robert Clausen (302) 323-4542 October 12, 1999

### **Regulation No. 36, Acid Rain Program**

The provisions of Parts 72 through 78, of Title 40 of the Code of Federal Regulations, dated July 1, ~~1995~~ 1999, are hereby incorporated into this regulation by reference. Within this regulation, the term "permitting authority" shall mean the Secretary of Delaware's Department of Natural Resources & Environmental Control.

---

### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 2107 (7 Del.C. 2107)

### **REGISTER NOTICE**

1. TITLE OF THE REGULATION:  
**Shellfish Regulations: Restrictions on Collecting Horseshoe Crabs**
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:  
Commercial eel fishermen and their alternates are authorized to collect horseshoe crabs by hand for their own use as bait in eel pots. Individuals with commercial horseshoe crab collecting permits are authorized to collect horseshoe crabs by hand for commercial use or for sale to others. It is proposed that commercial eel fishermen and their alternates not be authorized to assist commercial horseshoe crab collectors.  
SFR No. S-58, HORSESHOE CRAB CONTAINMENT AND TRANSPORTATION RESTRICTIONS has been determined to be not enforceable. Therefore, the restrictions on containment and transporting horseshoe crabs are no longer in effect. SFR No-58 is proposed to be stricken.

In order to insure that Delaware complies with the FISHERY MANAGEMENT PLAN FOR HORSESHOE CRABS and not exceed 350,000 horseshoe crabs per year taken from Delaware's beaches, additional restrictions are proposed. Commercial eelers and commercial horseshoe crab collectors are proposed to be not allowed to assist each other or commingle their harvest of horseshoe crabs. Commercial eelers are proposed to be not authorized to collect horseshoe crabs at night. This is consistent with other commercial shellfishermen not being authorized to fish at night. It is also proposed to consider implementing a daily limit on commercial horseshoe crab collectors if not having containment or transportation restrictions leads to higher harvest.

### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

If Delaware is found to be out of compliance with the Fishery Management Plan for horseshoe crabs by the Atlantic States Marine Fisheries Commission, the fishery for horseshoe crabs may be closed by the Secretary of the U.S. Department of Commerce.

### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. § 2701

### 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

### 6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441 prior to 4:30PM. A public hearing on these proposed amendments to shellfish regulations on horseshoe crabs will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Tuesday, December 14, 1999. The record will remain open for comments until 4:30 PM on December 17, 1999.

### 7. PREPARED BY:

Charles A. Lesser (302)-739-3441 October 6, 1999

### **PROPOSED AMENDMENTS TO SHELLFISH REGULATIONS ON HORSESHOE CRABS**

### **S-52 REQUIREMENT FOR COLLECTING HORSESHOE CRABS FOR PERSONS UNDER 16**

a) It shall be unlawful for any person under the age of sixteen (16) years to possess more than six (6) horseshoe crabs unless accompanied by a person who has been issued a

valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

b) It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe crabs as an alternate to a person with a valid commercial eel fishing license.

#### **S-53 NUMBER OF PERSON ACCOMPANYING A PERSON WITH A VALID HORSESHOE CRAB COLLECTING PERMIT**

a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons who are not required to have valid horseshoe crab commercial collecting permits.

b) It shall be unlawful for any person 16 years of age or older, who does not have a valid horseshoe crab collecting permit, to assist any person with a valid horseshoe crab collecting permit in the handling, loading or transporting of horseshoe crabs collected by said horseshoe crab collecting permittee while within 1000 feet of the shoreline of the water from which said horseshoe crabs were collected or landed.

#### **S-54 POSSESSION LIMIT OF HORSESHOE CRABS, EXCEPTIONS**

a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has filed all required reports of his/her and his/her alternate's previous month's harvest of horseshoe crabs with the Department in accordance with S-57. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal non-commercial use as bait for the licensee's eel pots fished in this state."

c) It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as an alternate.

d) Any person with both a valid commercial eel fishing license and a valid horseshoe crab collecting permit shall be considered as a horseshoe crab collecting permittee for

purposes of enforcing the provisions of Chapter 27, 7 Del. C and/or shellfish regulations pertaining to horseshoe crabs.

e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

#### **~~S-58 HORSESHOE CRAB CONTAINMENT AND TRANSPORTATION RESTRICTIONS~~**

~~(a) It shall be unlawful for any person to put, place, contain or cause to be contained any horseshoe crabs in any enclosure, container or facility, other than cold storage or freezer, that contains more than 300 cubic feet of storage space.~~

~~(b) It shall be unlawful for any person to transport or cause to be transported any horseshoe crab in any vehicle or trailer that contains more than 300 cubic feet of storage space."~~

#### **S-61 COLLECTING HORSESHOE CRABS AT NIGHT, PROHIBITED**

a) It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise.

(Note) (7 Del.C. §1904) prohibits the taking of any shellfish for commercial purposes between sunset and sunrise. Commercial "purposes" is defined as a person's intent to sell shellfisheries to another (§1901 (1), 7 Del. C.) Commercial eel fishermen collect horseshoe crabs for their own use, not for sale.

**DEPARTMENT OF PUBLIC SAFETY**  
**DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

Statutory Authority: 4 Delaware Code,  
 Section 304 (4 **Del.C.** 304)

Please take notice, pursuant to 29 Del. C. Ch. 101 and 4 Del. C. Ch. 3, the Delaware Alcoholic Beverage Control.

A public hearing will be held on the proposed Rule on Thursday, December 16, 1999 at 12:15 p.m. in the Third Floor Conference Room, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801. The purpose of this hearing will be to receive public comments on proposed Rule 76 in order that the Commission may vote to adopt, amend or reject said Rule at its December 16, 1999 meeting. The Commission will receive and consider input in writing from any person regarding proposed Rule 76. Written comments should be submitted to the Commission from November 1, 1999 through November 30, 1999, to Donald J. Bowman, Executive Secretary of the Delaware Alcoholic Beverage Control Commission, at the above address. For copies of the proposed Rule, please contact Joanne Episcopo at the above address or by calling (302) 577-5222. To make comments at the public hearing, please contact Donald J. Bowman, Executive Secretary, at the above address or phone number.

Commission proposes the following new Rule which reads as follows:

**Rule 76 A Rule Governing Taxes Paid On Spirits**

For the purpose of fulfilling the mandate of the General Assembly in Section 5 of the Act set forth in 1996 Delaware Laws Ch. 488, entitled "An Act To Amend Chapter 5, Title 4 Of The Delaware Code Relating To Taxes On Spirits," the following is provided:

1) the tax pay rates established in 1996 Delaware Laws Ch. 488, Sections 1 and 2 shall not expire on December 31, 1999 and shall continue to remain in effect;

2) those tax pay rates, now codified at 4 Del.C. sections 581(d)(4) and (d)(5) shall remain as specified by statute and as restated herein:

(d)(4) For each gallon of spirits containing 25 percent or less of ethyl alcohol by volume, \$2.50.

(d)(5) For each gallon of spirits containing more than 25 percent of ethyl alcohol by volume, \$3.75.

**DEPARTMENT OF**  
**TRANSPORTATION**  
**DIVISION OF PLANNING**

Statutory Authority: 17 Delaware Code, Section  
 508 & 29 Delaware Code, Chapter 84  
 (17 **Del.C.** 508, 29 **Del.C.** Ch. 84)

The Delaware Department of Transportation (Department) through its Division of Planning is seeking to amend Rules and Regulations for Subdivision Streets with the addition of Mobility Friendly Design Standards.

In the broadest sense and with regard to transportation, Mobility Friendly Design Standards are roadway design standards that promote greater use of transportation facilities and service by bicyclists and pedestrians. Such design standards include, but are not limited to, the addition of sidewalks and landscaped areas, narrower pavement widths, and a requirement for greater connectivity within developments. The addition of these standards will directly support the provisions of the Statewide Long Range Transportation Plan, and county and local the transportation and comprehensive land use plans that seek to promote more traditional development patterns by giving greater emphasis to bicycle and pedestrian access and mobility.

The Department will be accepting comments on the draft Mobility Friendly Design Standards through December 2, 1999. Comments, as well as any questions or requests for additional information should be directed to:

Joseph Cantalupo, Assistant Director of Planning  
 The Delaware Department of Transportation  
 P.O. Box 778  
 Dover, DE 19903  
 (302) 760-2121 (telephone)  
 (302) 739-2251 (fax)  
 jcantalupo@mail.dot.state.de.us

**Purpose**

The purpose of this amendment is to amend the Delaware Department of Transportation (Department) Rules and Regulations for Subdivision Streets to include Mobility Friendly Design Standards as an option for the development of local subdivision and minor collector subdivision streets. These standards are shown in Attachment 1.

**Background**

Early in 1997 the Wilmington Area Planning Council (WILMAPCO) began a study in partnership with the Town of Middletown, New Castle County, the Department, and their consultant team headed by LDR International. The

purpose of this study was to develop a set of optional land development and street design standards to encourage greater use of the transportation system by pedestrians and bicyclist, to provide greater access to public transportation facilities and services, and to provide connections within and between existing and planned communities. These standards are known as Mobility Friendly Design Standards (Standards).

The study was initiated, in part, to support the Town of Middletown Comprehensive Plan, the long-range planning efforts of New Castle County, the WILMAPCO Metropolitan Transportation Plan, and Transportation and Delaware's Future, the Statewide Long-Range Transportation Plan. Although these activities and products represent separate efforts, among their common goals is increasing accessibility of the transportation system and the mobility of its users by providing them with the widest range of travel options possible that are supported by sustainable transportation and land development systems.

The scope of the study was organized around three major activities. The first involved research on the various and most commonly used mobility friendly land development and street design criteria throughout the Country and their potential for application in Delaware. The second involved reviewing the land development regulations of the Town of Middletown to propose modifications that would support its desire to accommodate increased growth and economic development while retaining its current community character. The third task was to develop a set of subdivision street design standards for the Department that would support local efforts such as those being pursued by the Town of Middletown. The specific purpose of this portion of the study was to develop Standards for local subdivision and minor collector subdivision streets that could be incorporated into Rules and Regulations for Subdivision Streets, the manual under which the Department reviews subdivision streets.

The WILMAPCO study was completed in November 1997 and resulted in two major products. The first was a proposed set of revisions to the Town of Middletown zoning ordinance and site plan regulations. Subsequent to the completion of the study, the Town adopted the revisions with only a few minor modifications. The second product was a road standards matrix which proposed the standards needed by the Department to allow mobility friendly design. Although the Department actively participated in the study, there remained outstanding issues at its conclusion that limited the immediate adoption of its recommendations. These included how to address the relationship between the Standards and the Draft Statewide Access Management Program. Therefore, at the completion of the study the Department committed to more closely reviewing the criteria on the road standards matrix and to work out the details of their adoption and implementation. The Department has

completed its review and is adopting the Standards through this amendment.

### **Implementation**

The Department is updating its Access Management Program, which will affect where and how Mobility Friendly Design Standards are maintained within the family of Department regulations. As part of the Access Management Program, a Technical Design Manual is being developed that will include subdivision and entrance design standards, and clarify the relationship of such roads and connections with the Road Design Manual. Within the Technical Design Manual, the Standards will be an option for application to subdivision streets.

In the short-term and until work on the Technical Design Manual is completed, the Standards for local and minor collector subdivision streets are being implemented by amending Rules and Regulations for Subdivision Streets through adoption of this amendment. This will allow the Standards to be utilized immediately.

### **Application**

By providing the Standards as an option for the design of local subdivision and minor collector subdivision streets, the Department is supporting county and local governments that wish to implement land development patterns that provide more useable environments for pedestrians, bicyclists and transit users. The Department however, recognizes that for the Standards to be effective, they must be applied as a set and as part of municipally-based development strategy that emphasizes mobility and accessibility for pedestrians and bicyclists which is supported by appropriate land development regulations. With this in mind, the Department has established the following conditions under which applications of the Standards will be permitted:

- The Standards must be applied in their entirety. While each individual element of the Standards has some impact on mobility, applied independently these affects would be too incremental to be effective.
- Therefore, the Standards must be applied as a set to best serve their stated purpose; and,
- The Standards will be permitted in Multimodal Investment Areas and will be considered for application in Management and Preservation Investment Areas when they would be applied as part of an area wide development plan adopted by the county or local government.



## Administration

As discussed above, in the short-term the Standards will be amended to Rules and Regulations for Subdivision Streets and will ultimately become part of the Technical Design Manual being developed for the Access Management Program. As such they will be administered by the Subdivision and Utilities Section of the Division of Preconstruction within the Department.

The adoption and implementation of these Standards by the Department through this amendment does not eliminate additional requirements that might apply through the application of Rules and Regulations for Subdivision Streets. These include but are not limited to requirements for the production and submission of construction plans,

construction standards, utilities, inspection and maintenance, and traffic impact studies. Questions or issues that might arise through the application of the Standards will be decided at the discretion of the Subdivision and Utilities Engineer.

## Expiration

As the Standards will ultimately become part of the Technical Design Manual being developed under the Access Management Program, this amendment will expire on the effective date of that manual.

## Attachment 1

Design Element	DeIDOT Standard Subdivision	DeIDOT Mobility Friendly Design Guideline For Local Subdivision Streets
<b>Network Design</b>	None specified.	Short interconnected streets and direct routes are preferred. A network connectivity index of 1.4, calculated as the number of roadway links divided by the number of nodes (i.e., intersections and cul-de-sac heads), is preferred.
<b>Block Lengths</b>	None specified.	Between 200 and 500 feet with the requirement that blocks longer than 500 feet include mid-block crosswalks and pass-throughs.
<b>Design Speed</b>	25 miles per hour.	20 miles per hour.
<b>Intersection Design</b>	T-intersection at 90 degrees.	T-intersections or four-way intersections preferred
<b>All-way Stops</b>	None specified.	Generally inappropriate as a method of speed control at low-volume intersections.
<b>Corner Radius</b>	25 feet.	Local to local subdivision street @ 25-foot radius Local to collector subdivision street with parking @ 30-foot radius Local to collector subdivision street without parking @ 40-foot radius
<b>Maximum Cul-de-sac Length</b>	500 to 1,000 feet, depending on density of development.	300 feet is the maximum permitted length of a cul-de-sac with it serving no more than 30 units and with cut-throughs provided at cul-de-sac heads for pedestrians and bicyclists.
<b>Minimum Driveway Spacing</b>	200 feet, with narrower lots calling for shared driveways.	50 feet, with narrower lots calling for alley access or shared driveways.
<b>Minimum Driveway Width</b>	12-foot standard, not minimum.	Between 8 to 16 feet for single family development, depending on setback of garage and number of cars; 18 feet for multi-family development.
<b>Right-of-way Width</b>	50 feet for minor streets with 26 feet permitted under special circumstances.	42 feet. This is based on a 12-foot travel way, two one-foot curb offsets, one 7-foot parking lane, one 6-inch curb on each side of the street, one 5-foot planting strip on each side of the street, and one 5-foot sidewalk on each side of the street.
<b>Pavement Width</b>	22 feet for minor streets (24 feet when offset from integral curb is considered).	21 feet. This is based on a 12-foot travel lane, two one-foot curb offsets, and one 7-foot parking lane. For these low volume roads, this pavement width assumes that in the cases when vehicles meet that they will be able to pass each other by finding space at driveways or in parking lanes to maneuver within.
<b>Travel Lane Width</b>	11 feet for minor streets	See above.
<b>Parking Lane Width</b>	None specified.	7 feet.

<b>Pavement Treatment</b>	<b>Edge</b>	Mountable or barrier curbs. None are required at densities less than two units per acre and where the lots have greater than 100 feet of frontage and where buildings are set back at least 60 feet.	6 or 8-inch vertical curbs with closed drainage.
<b>Horizontal Radius</b>	<b>Curve</b>	150 feet	90-foot minimum when the curve is unsigned, and a 45-foot minimum when the curve is signed as a traffic calming measure.
<b>Vertical Curve Length</b>		None specified.	60-foot minimum at a design speed of 20 miles per hour. For larger grade changes the Department will defer to AASHTO Figures III-11 for crest curves and III-43 for sag curves. When a short vertical curve is signed and marked as a traffic calming measure, no minimum standards apply.
<b>Sidewalk Warrants</b>		Not required by the Department. New Castle County requires sidewalks on at least one side of all local streets with 10 or more units and densities greater than 1 unit per acre, and on both sides of minor collectors.	Required on both sides of the street.
<b>Sidewalk Width</b>		None specified. New Castle County requires 5 feet.	5 feet.
<b>Planting Buffer/Utility Strip</b>		None specified.	5-foot minimum.
<b>Tree/Obstacle Clearance</b>		A clear zone of 2 feet must be provided in urban areas where a barrier curb is provided.	2.5 feet with vertical curb as measured from the back of the curb to the centerline of the tree.
<b>Alleys</b>		None specified.	Alleys are recommended when lots are less than 50 feet wide. When provided, a 20-foot landscaped right-of-way should be provided with a 12-foot paved width.
<b>Traffic Measures</b>	<b>Calming</b>	None specified.	A full array of horizontal and vertical measures is allowed, consistent with a 20 mile per hour design speed.

<b>Design Element</b>	<b>DeIDOT Standard Subdivision</b>	<b>DeIDOT Mobility Friendly Design Guideline For Minor Collector Subdivision Streets</b>
<b>Network Design</b>	None specified.	Short interconnected streets and direct routes are preferred. A network connectivity index, calculated as the number of roadway links divided by the number of nodes (i.e., intersections and cul-de-sac heads), of 1.4 is preferred.
<b>Block Lengths</b>	None specified.	Between 200 and 500 feet with the requirement that blocks longer than 500 feet include mid-block crosswalks and pass-throughs.
<b>Design Speed</b>	30 miles per hour.	25 miles per hour.
<b>Intersection Control</b>	T-intersection at 90 degrees.	Roundabouts and two-way stops preferred to signals.

# PROPOSED REGULATIONS

<b>All-way Stops</b>	None specified.	Unwarranted stop signs are not preferred but are acceptable when an engineering study shows unusually high cut-through traffic volumes or an unusually high accident rate.
<b>Corner Radius</b>		Local to collector subdivision street with parking @ 30-foot radius  Local to collector subdivision street without parking @ 40-foot radius  Collector to collector subdivision street with parking @ 25-foot radius  Collector to collector subdivision street without parking @ 50-foot radius
<b>Maximum Cul-de-sac Length</b>	500 to 1,000 feet, depending on density of development.	300 feet is the maximum permitted length of a cul-de-sac with it serving no more than 30 units and with cut-throughs provided at cul-de-sac heads for pedestrians and bicyclists.
<b>Minimum Driveway Spacing</b>	200 feet, with narrower lots calling for shared driveways.	50 feet, with narrower lots calling for alley access or shared driveways.
<b>Minimum Driveway Width</b>	12-foot standard, not minimum.	Between 8 to 16 feet for single family development, and 18 feet for multi-family development.
<b>Right-of-way Width</b>	60 feet for minor collector subdivision streets.	53 feet minimum to 60 feet maximum. The maximum right-of-way is based on two 10-foot travel lanes, two one-foot curb offsets, one 7-foot parking lane, one 6-inch curb on each side of the street, one 10-foot planting strip on each side of the street, and one 5-foot sidewalk on each side of the street. The minimum right-of-way can be used if on-street parking is eliminated.
<b>Pavement Width</b>	32 feet for minor collector subdivision streets (34 feet when offset from integral curb is considered).	22 feet minimum to 29 feet maximum. The maximum pavement width is based on two 10-foot travel lanes, two one-foot curb offsets, and one 7-foot parking lane.
<b>Travel Lane Width</b>	11 feet 4-inches for minor subdivision streets.	10 feet.
<b>Parking Lane Width</b>	None specified.	7 feet.
<b>Pavement Edge Treatment</b>	None specified.	6 or 8-inch vertical curbs with closed drainage.
<b>Medians or Center Islands</b>	None specified.	Required on all multilane roads with additional right-of-way required if medians or center islands are provided.
<b>Horizontal Curve Radius</b>	300 feet.	167-foot minimum when the curve is unsigned or a 90-foot minimum when the curve is signed as a traffic calming device.
<b>Vertical Curve Length</b>	None specified.	75-foot minimum at a design speed of 25 miles per hour. For larger grade changes the Department will defer to AASHTO Figures III-11 for crest curves and III-43 for sag curves. When a short vertical curve is signed and marked as a traffic calming measure, no minimum standards apply.
<b>Sidewalk Warrants</b>	Not required by the Department. New Castle County requires sidewalks on at least one side of all local streets with 10 or more units and densities greater than 1 unit per acre, and on both sides of minor collectors.	Required on both sides of the street.
<b>Sidewalk Width</b>	None specified. New Castle County requires 5 feet.	5 feet minimum.

<b>Planting Buffer/Utility Strip</b>	None specified.	10-foot minimum.
<b>Tree/Obstacle Clearance</b>	A clear zone of 2 feet must be provided in urban areas where a barrier curb is provided.	5 feet with vertical curb as measured from the back of the curb to the centerline of the tree.
<b>Alleys</b>	None specified.	Alleys are recommended when lots are less than 50 feet wide. When provided, a 20-foot landscaped right-of-way should be provided with a 12-foot paved width.
<b>Traffic Calming Measures</b>	None specified.	A full array of horizontal and vertical measures is required, consistent with a 25 mile per hour design speed, except on primary emergency response routes.

---

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** 122(d))

**Regulatory Implementing Order**  
**Military Leave**  
**Credit for Service in the Armed Forces**

## I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Military Leave, page 7-5, and the regulation Credit for Service in the Armed Forces, page 1-12, from the Handbook of Personnel Administration for Delaware School Districts. The amendments are necessary to clarify and improve the language, eliminate references found in the Delaware Code and remove the language "during time of war or National Emergency (commencing Sept. 1940)." On the recommendation of the State Board of Education, these regulations will remain as two separate regulations.

Notice of the proposed amendments was published in the News Journal and the Delaware State News on September 14, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisement.

## II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations in order to clarify and improve the language, eliminate references found in the Delaware Code and remove the language "during time of war or National Emergency (commencing Sept. 1940)."

## III. Decision to Amend the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be found in the Regulations of the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the

Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on October 21, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of October, 1999.

DEPARTMENT OF EDUCATION  
Valerie A Woodruff  
Acting Secretary of Education

Approved this 21st day of October, 1999.

STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B Graham, Esq.  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**AS APPEARS IN THE HANDBOOK OF PERSONNEL  
FOR DELAWARE SCHOOL DISTRICTS**

**Military Leave**

~~Title 14, §1327(a) requires that leave of absence for military service be granted and specifies attendant conditions and provisions.~~

~~The person who may be appointed to replace the principal, teacher, or other employee shall be appointed only for the period covered by the leave of absence. §1327(b).~~

~~Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit. Such military training or special duty leaves shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.~~

~~n-employee called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to his leave, along with a copy of the official orders summoning him to military service.~~

~~(State Board of Education regulation, August 21, 1969).  
Service in the Armed Forces~~

~~Together, Title 29, §5105 and Title 14, §1327 authorize leave of absence for military service, establish rights to pension and the term of successor appointees.~~

~~State Board of Education regulation states that:~~

~~"In determining the credit for service in the armed forces, one year's experience shall be allowed for each twelve (12) months or major fraction thereof, except that a combination of service and teaching during a school year may count if ninety-one (91) days or more.~~

~~"Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States during time of war or National emergency (commencing September, 1940), provided that the individual became an employee within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment." (State Board of Education regulation, June 19, 1975, effective July 1, 1975.)~~

**AS AMENDED**

700.2 Training Camp and Special Duty in the National Guard and/or Reserves

1.0 Leave for Training Camp and Special Duty in the National Guard and/or Reserves

1.1 Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit.

1.2 Such military training or special duty leaves shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.

1.3 Employees called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to their leave, along with a copy of the official orders summoning them to military service.

(See Del. C., Title 29, Section 5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees)

[700.3] ~~[2.0]~~ Credit for Experience for Full-Time Service in the Armed Forces

~~[2.1 In determining the credit for service in the armed forces, one year's experience shall be allowed for each twelve (12) months or major fraction thereof, except that a combination of service and teaching during a school year may count if ninety one (91) days or more.]~~

[1.0] ~~[2.2]~~ Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States, provided that the individual became a teacher, principal, superintendent, or other administrative employee in Delaware within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment.

[1.1 Credit for service in the armed forces shall be calculated as follows: One year of experience shall be allowed for each year of service. For purposes of this section, 183 days in any calendar year shall constitute one year of experience, but not more than 1 year of experience may be credited for any 1 calendar year, except that a combined total of 91 days of service and employment in any of the positions identified above during any one school year will count as a year of experience.]

(See Del. C., Title 14, Sections 1312(a) and 1327 Leave of Absence for Persons in Military Service).

### Regulatory Implementing Order

#### Repeal of Regulations from the Handbook of Personnel Administration for Delaware School Districts

##### I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal three regulations and part of a fourth from the Handbook of Personnel Administration for Delaware School Districts because they are found in either the Delaware Code, in other Department of Education Regulations or are no longer accurate.

- Deferred Compensation found on page 3-1 is fully addressed in Del. C. 29, Chapter 60A, and is the responsibility of the local school districts.
- Payment of Teachers in Summer Programs in Vocational-Technical School Districts, page 2-2, is a repeat of language in Del. C., Section 1703(i).
- State Salary Increase Adjustments for Changed Status, page 2-1, has been updated and currently is regulated in Chapter IX-Professional Growth Credits in 300.1 General Regulations and Glossary of Terms of the Manual for

Certification of Professional Public School Personnel.

- Payment Schedules for Contractual Programs/In-Service Education, page 2-2, repeal of parts a. and b., because all in-service programs now require the development of a product.

On the recommendation of the State Board of Education the first paragraph of the regulation concerning hourly salary schedules is not being repealed and is also being included in amended form as part of the regulation, Payment of Personnel under Various Programs, which is on the agenda as a discussion item.

Notice of the proposed repeal was published in the News Journal and the Delaware State News on September 14, 1999 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

##### II. Findings of Fact

The Acting Secretary finds that it is necessary to repeal these regulations because they are found in either the Delaware Code, in other Department of Education Regulations, or are no longer accurate.

##### III. Decision to Repeal the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby repealed.

##### IV. Text and Citation

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook of Personnel Administration for Delaware School Districts.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on October 21, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of October, 1999.

DEPARTMENT OF EDUCATION  
Valerie A Woodruff  
Acting Secretary of Education

Approved this 21st day of October, 1999.

**STATE BOARD OF EDUCATION**

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esq.  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**3. Benefits****Deferred Compensation**

~~Tax Sheltered Annuities — The purchase of tax sheltered annuities by educational personnel (applicable to both federal and state income tax) has been approved by the State Board of Education by the following resolution:~~

~~The State Board of Education approved in principle the institution of a tax sheltered annuity program for all eligible employees in the various school systems.~~

~~(State Board of Education regulation, April 5, 1962)~~

~~From this point forward, the execution and administration of these purchases come under the jurisdiction of the local boards.~~

~~Deferred Compensation for Employees of the State—Title 29, Chapter 60A establishes an intent to create a vehicle through which all employees of the State may, on a voluntary basis, provide for additional retirement income security. Under this chapter the Department of Finance and the State Treasurer are authorized to make payroll deductions for any employee of the State who has authorized such deductions in writing.~~

**Payment of Teachers in Summer Programs in Vocational-Technical School Districts**

~~Teachers under contract with a Vocational-Technical School District who work in summer programs shall be entitled to payment at the rate of number of days employed under their most recent contract multiplied by 1/185 of their entitlement for a full school year. Any occupational/vocational teacher in a vocational-technical school district may be employed an additional fifteen (15) days for participation in program development as approved by the State Board of Education and paid at the rate of 1/185 of his annual salary. Teachers employed in summer vocational-occupational programs or in program development as indicated in this paragraph shall not be employed in excess of 2/10 the number of days authorized for the regular school year in any fiscal year. (State Board of Education regulation, June 18, 1970.)~~

~~State Salary Increase Adjustments for Changed Status State salary adjustments, because of the completion of Professional Growth Graduate Programs (B+15, B+30,~~

~~M+15, M+30, and M+45) or college and university degrees from regionally accredited institutions, will become effective in the pay period next following approval of the candidate's record by the Division of Certification and Personnel, but the adjustment will be retroactive to the first of the month following the date certified as the date when the program was completed. No salary credit may be retroactive into a prior fiscal year. Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or State fiscal officers. (State Board of Education regulation, September 15, 1977.)~~

~~The Manual of Certification of Professional School Personnel, Delaware, May 16, 1974 includes rules and regulations, definitions and application procedures for professional growth graduate programs and for inservice training.~~

**Payment Schedules for Contractual Programs/Inservice Education**

Hourly salary schedules are authorized for payment of personnel employed in contractual programs such as Adult Basic Education, Vocational Education., Homebound Instruction and the James H. Groves High School. The hourly salary schedule for the current fiscal year is in Section 10 of this handbook.

**Inservice Education Rates for:**

a. ~~Attendance at inservice education programs or institutes sponsored by the Department of Public Instruction will be a fractional part of the hourly rate established for teaching in contractual programs.~~

b. ~~Participants in programs that require development of a position paper, a program, or the like, may be paid at a rate up to the full hourly rate of contractual programs on approval by Administrative Council. Inservice rates are included in Section 10 of this handbook.~~

~~State Board of Education regulation, February 18, 1982.)~~



**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** 505)

In the Matter Of:

Revision of the Regulations  
Of the Medicaid/medical  
Assistance Program

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update the Division of Social Services Eligibility Manual policies related to necessary medical care and eligibility for State funded benefits (nonqualified aliens). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the May 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective November 10, 1999.

Gregg C. Sylvester, M.D.  
Secretary  
September 30, 1999

**Division of Social Services Eligibility Manual**

14330.2 ELIGIBILITY FOR STATE FUNDED BENEFITS  
(NONQUALIFIED ALIENS)

Effective January 1, 1998, legally residing nonqualified

aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. ~~including long term care services.~~ This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

NEW:

20620.2.2 NECESSARY MEDICAL CARE

Requests for income to be protected for necessary medical or remedial care not covered under the Medicaid plan may NOT be for a single item that costs less than \$50.00, whether billed individually or together with other items.

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** 505)

In the Matter Of:

Revision of the Regulations  
Of the Medicaid/medical  
Assistance Program  
DSSM 15110, 15110.1, 15120, 15120.  
15150.1, 15160 and 15160.1

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update Medical Assistance eligibility rules. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the June 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the June 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective November 10, 1999.

Gregg C. Sylvester, M.D.  
Secretary  
August 9, 1999

## Division of Social Services Eligibility Manual

### 15110 A BETTER CHANCE, DELAWARE'S TANF PLAN

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, amended title IV-A of the Social Security Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaces AFDC with a program of block grants to States for Temporary Assistance for Needy Families (TANF). Under TANF, States have broad flexibility to provide assistance to needy families. Delaware implemented its TANF program, A Better Chance, on March 10, 1997.

#### 15110.1 Medicaid Eligibility

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in the section, "Low Income Families with Children under Section 1931".

Section 1931 also gives States more flexibility in determining Medicaid eligibility. ~~Delaware has used the authority in Section 1931 to keep the rules for A Better Chance and for Medicaid consistent and use a single application form to determine eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.~~

Delaware has used the authority in Section 1931 to ensure that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.

### 15120 LOW INCOME FAMILIES WITH CHILDREN UNDER SECTION 1931

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Section 114, established a new Medicaid eligibility group for low income families with children at Section 1931 of the Social Security Act. Coverage for this mandatory categorically needy group of families with children is effective March 10, 1997, the date that Delaware's TANF plan was approved.

Section 1931 defines the basic criteria for determining Medicaid eligibility based upon AFDC eligibility criteria. The criteria includes income and resource standards and methodologies as in effect on July 16, 1996, and deprivation and specified relative rules that were in effect on that date. Section 1931 gives states flexibility to change these criteria. ~~Delaware has amended its Medicaid state plan to provide that the income, resource, and family composition rules used to determine eligibility under this group are the same as the rules used to determine eligibility under ABC.~~

Families who are eligible for Medicaid under Section 1931 may be receiving ABC cash assistance or may be Medicaid only families.

#### 15120.2 Financial Eligibility

~~Follow ABC income and resource standards and methodologies (disregards, exclusions, allocations)~~

ABC rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted

INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code, Sections 311, 2304(16) and 2312 (18 Del.C. 311, 2304(16) & 2312)

from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reappplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received the 30 and 1/3 disregard for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

15150.1 AFDC/TANF Related Deeming

Any individual who is denied or loses Medicaid under Section 1931 based on the budgeting of stepparent, grandparent, or sibling income or resources may be eligible for Medicaid.

Follow all rules for Medicaid under Section 1931 (same as A Better Chance rules) except for the deeming of income or resources from grandparents, stepparents, or siblings.

15160 Acute Care Program

Medicaid coverage is available to individuals in acute care hospitals who would be eligible for ABC and Medicaid under Section 1931 if they were not hospitalized. These individuals will be determined eligible only after the patient has been in the hospital for 30 consecutive days. For example, if an individual enters the hospital on April 24, DSS need not consider eligibility under this program unless the individual is still hospitalized on May 23 (and has been continuously hospitalized since April 24).

15160.1 Eligibility Determination

Eligibility will be determined using ABC and the technical and financial criteria for Medicaid under Section 1931. There is no medical eligibility criterion.

In the Matter of: |
|
The Proposed Insurance |
Department Regulation No. 82 |
Docket No. 99-28 |

Order

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

WHEREAS, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

NOW THEREFORE, I Order that Regulation No.82 be promulgated as referenced herein, effective on January 1, 2000.

SO ORDERED this 21st day of September 1999.

Donna Lee Williams
Insurance Commissioner State of Delaware

Proposed Order and Recommendations

Proposed Regulation 82 requires health insurance companies to make appropriate payment to health care providers when more than one surgical service is performed on the same patient, by the same physician on the same day.

On June 1, 1999, the proposed regulation was published in the Register of Regulations in accordance with 29 Del. C. chapters 11 and 101. Also in accordance with 29 Del. C. chapter 101, notices of the public hearing were published in newspapers throughout the state (see Exhibit 1). The public hearing was held on June 24, 1999 before the below-signed hearing officer. The record was left open until July 9, 1999 to allow for the submission of additional exhibits by interested parties. The following is the Proposed Order and Recommendation regarding the adoption of Regulation 82.

Present at the June 24 hearing were numerous individuals representing healthcare providers the insurance industry and others. A list of attendees is attached hereto as Exhibit "A".

**I. Summary of the Evidence**

The evidence in this matter consists of the oral testimony of 15 individuals, as well as numerous written submissions by interested parties attached hereto as exhibits. In making the following recommendation I have considered the contents of the file, including the oral testimony given at the aforementioned public hearing and the exhibits attached hereto. In summary, strong support for applying existing Medicare rules and regulations for the payment of multiple surgical procedures was expressed by healthcare providers who testified at the hearing. Criticisms of the proposed Regulation include:

1. Concern that the adoption of proposed Regulation 82 would increase healthcare costs in the form of higher premium expenses;
2. Lack of jurisdiction;
3. Paragraph (3) of §5 differs from the Medicare policy and is unjustifiably broad;
4. Use of the undefined term “fee schedule” raises the question whether Medicare fee schedules are to be enforced in the non-Medicare market; and
5. Use of the term health insurance or benefits is so broad as to be construed to include some property casualty products of insurance.
6. §7 as proposed gives rise to penalties absent an order of the Commissioner

**II. Findings of Fact and Conclusions of Law**

Based upon the evidence received in this matter both oral and written, I find that the adoption of standards for the payment of multiple surgical procedures is advisable as a matter of fundamental fairness and to minimize the patient’s risk and inconvenience of multiple surgeries. I find that:

1. The public policy justification for ensuring proper treatment of multiple surgical procedures outweighs the risk of relatively slight premium increases;
2. The Insurance Commissioner possesses the jurisdiction to promulgate Regulation 82 on the grounds that failure to pay claims properly and fairly constitutes a violation of subparagraphs d. and f. of 18 *Del. C.* §2304(16). Further, the Commissioner is authorized under §2312 and §311 to issue reasonable regulations that are necessary to prohibit practices identified in §2304.
3. Paragraph (3) of §5 is broader than Medicare rules provide and may be interpreted to conflict with preceding standards;
4. The term “fee schedule” should be defined to clarify its meaning;
5. It is the Department’s intent to restrict application of the multiple surgical procedure standards of proposed Regulation 82 to health insurance plans offering comprehensive, major medical coverage and not to apply

them to any property/casualty insurance or limited benefit plans; and

6. §7 is to be revised to clarify that penalties are recoverable only pursuant to an order of the Commissioner.

I recommend a number of additional technical revisions to the proposed regulation as they appear in the “marked up” version of Regulation 83 attached hereto as Exhibit “B”.

**III. Recommendation**

For the above reasons, it is recommended that the Insurance Commissioner adopt Regulation 82 in the form attached as Exhibit “B”.

SO RECOMMENDED, this 20th day of September 1999

Fred A. Townsend III  
Hearing Officer

**Regulation No. 82  
Standards of payment for Multiple Surgical Procedures**

**Sections**

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Procedure for Payment
6. General Business Practice
7. Penalty
8. Causes of Action and Defenses
9. Effective Date

§1. Authority.

This regulation is adopted by the Commissioner pursuant to 18 *Del. C.* §§311, 2304(16) and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

§ 2. Definitions.

For the purpose of this regulation, the following definitions shall apply:

(a) *Health insurer*: health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulations.

(b) *Health Care Provider*: any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.

(c) *Policyholder or Certificate Holder*: a person covered under such policy or a representative designated by

such person and entitled to services provided in the policy.

**[(d) Fee schedule: the monetary allowance payable to a healthcare provider for services rendered as provided for by agreement between the health care provider and the health insurer.]**

§ 3. Scope.

This regulation shall apply to all health insurers as defined in § 2 above, and shall apply to all contracts for insurance **[and certificates of coverage]** issued by **[these such]** entities.

§ 4. Purpose.

The purpose of this regulation is to ensure that health insurers provide proper payment to health care providers when more than one surgical service is performed on the same patient, by the same physician, on the same day.

§ 5. Procedure for payment of multiple surgical services.

When more than one surgical service is performed on the same patient, by the same physician and on the same day, insurers shall make payment to the providers as follows:

(1) One hundred per cent (100%) of the fee schedule for the procedure which has the highest regular fee schedule amount; and

(2) For each additional procedure, performed through the same incision or separate incisions, as set forth in the National Correct Coding Manual established by Administar Federal under contract with the Health Care Financing Administration, not less than fifty per cent (50%) of the fee schedule amount.

**[(3) For unrelated surgical procedures (e.g., partial thyroid removal and a hernia repair), one hundred per cent (100%) of the fee schedule for each procedure performed on multiple body parts.]**

§ 6. General Business Practice.

(a) Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services **[promptly]**, as defined in section 5 above **[and in accordance with Insurance Department regulation governing the timeliness of claims handling]**, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* §2304(16)(f).

(b) The 36 month period established in paragraph (a) above shall be measured based upon the date the complaints are received at the Department. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in paragraph (a) above.

§ 7. Penalties.

In addition to the imposition of penalties in accordance with 18 *Del.C.* §2312(b), any health insurer that fails to adhere to the standards contained in this regulation may be required by order of the Commissioner to pay to the health care provider or claimant, in full settlement of the claim or bill for heath care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* §2301(a). **[This Such]** interest shall be computed from the date the claim or bill for services first became due.

§ 8. Causes of Action and Defenses.

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* §2304(16).

§ 9. Effective Date.

This regulation shall become effective **[on January 1, 2000 120 days from the date signed by the Commissioner.]**

## INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16) and 2312 (18 *Del.C.* 311,  
2304(16) & 2312)

In the Matter of:

The Proposed Insurance  
Department Regulation No. 83  
Docket No. 99-29

### Order

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

WHEREAS, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

NOW THEREFORE, I Order that Regulation No.83 be promulgated as referenced herein, effective on January 1,

2000.

SO ORDERED this 27th day of September 1999.

Donna Lee Williams

Insurance Commissioner, State of Delaware

### **Proposed Order and Recommendations**

Proposed Regulation 83 requires health insurance companies to make appropriate payment for the services of assistants at surgery.

On June 1, 1999, proposed regulation 83 was published in the Register of Regulations in accordance with 29 *Del. C.* chapters 11 and 101. Also in accordance with 29 *Del. C.* chapter 101, notices of the public hearing were published in newspapers throughout the state (see Exhibit 1). The public hearing was held on June 24, 1999 before the below-signed hearing officer. The record was left open until July 9, 1999 to allow for the submission of additional exhibits by interested parties. The following is the Proposed Order and Recommendation regarding the adoption of Regulation 83.

Present at the June 24 hearing were numerous individuals representing healthcare providers the insurance industry and others. A list of attendees is attached hereto as Exhibit "A".

#### **I. Summary of the Evidence**

The evidence in this matter consists of the oral testimony of 15 individuals, as well as numerous written submissions by interested parties attached hereto as exhibits. In making the following recommendation I have considered the contents of the file, including the oral testimony given at the aforementioned public hearing and the exhibits attached hereto. In summary, strong support for the adoption of a standard governing reimbursement for services performed by assistants at surgery was expressed by healthcare providers who testified at the hearing. Criticisms of the proposed Regulation include:

1. Concern that the adoption of proposed Regulation 83 would increase healthcare costs in the form of higher premium expenses;
2. Lack of jurisdiction;
3. §2(4) references professional titles not recognized by Delaware law or Medicare rules;
4. Proposed Regulation 83 distinguishes between physician employers and institutional employers of assistants at surgery;
5. §5 guidelines for payment are vague as they refer to paying claims "in the same manner as Medicare";
6. Use of the phrase "health insurance or benefits" is so broad as to be construed to include certain property/casualty insurance products; and
7. §7 as proposed gives rise to penalties absent an

order of the Commissioner.

#### **II. Findings of Fact and Conclusions of Law**

Based upon the evidence received in this matter both oral and written, I find that the adoption of standards for the payment of claims related to the services of assistants at surgery is advisable as a matter of fundamental fairness and promotes . I find that:

1. The public policy justification for ensuring proper claims handling of services performed by assistants at surgery outweighs the risk of relatively slight premium increases;
2. The Insurance Commissioner possesses the jurisdiction to promulgate Regulation 83 on the grounds that failure to pay claims properly and fairly constitutes a violation of subparagraph d. of 18 *Del. C.* §2304(16). Further, the Commissioner is authorized under §2312 and §311 to issue reasonable regulations that are necessary to prohibit practices identified in §2304.
3. References to professional titles not recognized under Delaware law should be stricken;
4. The limitation that fees for the services of assistants at surgery shall not be payable to hospital ambulatory surgical centers is unjustified and should be stricken;
5. Regulation 83 guidelines for the payment of assistant at surgery fees should be referenced with greater specificity.
6. It is the Department's intent to restrict application of the provisions of proposed Regulation 82 to health insurance plans offering comprehensive, major medical coverage and not to apply them to property/casualty insurance or limited benefit plans; and
7. §7 is to be revised to clarify that penalties are recoverable only pursuant to an order of the Commissioner.

I recommend a number of additional technical revisions to the proposed regulation as they appear in the "marked up" version of Regulation 83 attached hereto as Exhibit "B".

#### **III. Recommendation**

For the above reasons, it is recommended that the Insurance Commissioner adopt Regulation 83 in the form attached as Exhibit "B".

SO RECOMMENDED, this 22nd day of September 1999.

Fred A. Townsend III  
Hearing Officer

## Regulation No. 83

## Standards of payment for Assistants at Surgery

## Sections

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Procedure for Payment
6. General Business Practice
7. Penalty
8. Causes of Action and Defenses
9. Effective Date

## §1. Authority.

This regulation is adopted by the Commissioner pursuant to 18 *Del. C.* §§311, 2304(16) and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

## §2. Definitions.

For the purpose of this regulation, the following definitions shall apply:

(1) *Health insurer*: health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulations.

(2) *Health Care Provider*: any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.

(3) *Policyholder or Certificate Holder*: a person covered under such policy or a representative designated by such person and entitled to services provided in the policy.

(4) *Assistant at Surgery*: a physician, nurse practitioner, clinical nurse specialist, ~~certified surgical technician, certified first surgical assistant,~~ or physician assistant who is licensed and actively assists the physician in charge of a case in performing a surgical procedure.

**[(5) *Fee schedule*: the monetary allowance payable to a healthcare provider for services rendered as provided for by agreement between the health care provider and the health insurer.]**

## §3. Scope.

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all contracts for insurance **[and certificates of coverage]** issued by **[these such]** entities.

## §4. Purpose.

Some surgical procedures require a primary surgeon and an assistant surgeon. Federal law sets forth guidelines for the payment, under Medicare Part B, for the services of assistants at surgery. No such guidelines exist in Delaware

law, and in many cases health insurers will not pay for such services. The purpose of this regulation is to require that health insurers make payment for the services of assistants at surgery in the same manner as provided for under Medicare Part B.

§5. Guidelines for payment for the services of assistants at surgery.

(a) A health insurer shall be required to make payment for the professional services of assistants at surgery. Such payment shall be made in the same manner set as forth in the Balanced Budget Act of 1997 and applicable publications issued by the Health Care Financing Administration (HCFA), including but not limited to HCFA's regulations, the Medicare Part B Physician/Supplier Handbook, and Medicare Part B newsletters.

~~(b) [Payment for the services of an assistant at surgery shall be made only to the surgical assistant's employer if such employer is neither a hospital or ambulatory surgical center. Medicare rules governing the following aspects of claims for services of assistants at surgery shall be observed:~~

**(1) the percentage of fee schedule (as "fee schedule" is defined herein) for physicians acting as assistants at surgery;**

**(2) the percentage of fee schedule (as "fee schedule" is defined herein) for non physicians acting as assistants at surgery; and**

**(3) whether the surgical procedure in question is eligible for assistant at surgery services.]**

§6. General Business Practice.

(a) Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* §2304(16)(f).

(b) The 36 month period established in subsection (a) above shall be measured based upon the date the complaints are received at the Department. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in subsection (a) above.

§7. Penalties.

In addition to the imposition of penalties in accordance with 18 *Del. C.* §2312(b), any health insurer that fails to adhere to the standards contained in this regulation **[shall may]** be required **[by order of the Commissioner]** to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders

under 6 Del.C. §2301(a). ~~[This Such]~~ interest shall be computed from the date the claim or bill for services first became due.

§8. Causes of Action and Defenses.

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 Del. C. §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del. C. §2304(16).

§9. Effective Date.

This regulation shall become effective ~~[120 days from the date signed by the Commissioner on January 1, 2000.]~~

**DEPARTMENT OF LABOR**

**DIVISION OF EMPLOYMENT & TRAINING**

**COUNCIL ON APPRENTICESHIP AND TRAINING**

Statutory Authority: 19 Delaware Code,  
Section 202 (a) (19 Del.C. §202(a))

Public hearings before the Council on Apprenticeship and Training were held at Buena Vista on June 10, 1997 and March 10, 1998, to obtain comments related to proposed rule changes. Subsequently, the Secretary of Labor suggested a change to the definition of Apprentice. Because more than 12 months had elapsed since the end of the public comments period, another public hearing was held on August 2, 1999, after due notice. At the meeting that followed a quorum of the Council recommended that changes to the Rules and Regulations be adopted pursuant to the authority of the Secretary of Labor based on the following Summary of the Evidence and Information submitted during all of the periods of public comment and recommended Findings of Fact.

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED:**

At the public hearings held June 10, 1997 and March 10, 1998 the following members of the public addressed Council:

1. On June 10, 1997, Stan Klein, Joint Apprenticeship and Training Committee for Local 313 of the International Brotherhood of Electrical Workers, suggested that clear and concise rules are essential. He expressed concern that the term "full-time" should be defined so training could be completed predictably. There is concern about apprentices

being used outside the trade though the rules should not prevent using a good employee in some other capacity when there is a shortage of work.

On March 10, 1998, Stan Klein supported the intent of the full-time language to avoid prolonging programs to 8-9 years but believes it should mean working all the hours available, which may not be 40 hours per week.

2. On June 10, 1997, Bill McCloskey, President of the Delaware Building Trades and President of Ironworkers Local 451, supported the inclusion of "full-time" language in the rules. He thought using an apprentice in another field in slow periods could be limited by Council.

On March 10, 1998, he said apprentices should not be abused by employers and working outside the classification should not be counted.

3. On June 10, 1997, Ed Capadanno, Executive Director of Associated Builders and Contractors, spoke in support of the proposed regulations.

On March 10, 1998, he said the "full-time" language needed clarification. Some employers may be disqualified from the program. Enforcement is more than the present staff can handle.

4. On March 10, 1998, Karen Peterson, Director of Industrial Affairs, did not object to the change, but explained conflicts with prevailing wage enforcement. Full-time defined as a 40 hour work week may create problems. Trade definitions do not match classification definitions in the prevailing wage regulations. Forty hours per week is unrealistic in construction trades. She suggested as an alternative that the apprentice work "exclusively" in the trade not 40 hours a week. There may be a chilling effect on apprenticeship in rate jobs. She also had concern with the registration. Finally, apprentices can work in more than one trade based on classifications in the prevailing wage regulations.

5. Ralph G. Degli Obizzi, Jr., supported Karen Peterson's remarks. Full-time isn't clear.

6. George Elseroad, Bureau of Apprenticeship and Training, U.S. DOL expressed concern over the affect of "full-time" language on school-to-work programs.

7. Lawrence Sontowski, Department of Labor, described State programs that don't provide a 40 hour week.

8. Don Clagg, Local 19 Sheet Metal Workers, believes the last sentence in 106.2(c) is important. He is concerned when an apprentice is worked as a laborer outside his trade and paid a lower wage.

9. Michael Benefield, Director of Division of Employment and Training, indicated that the enforcement of full-time is not within the capability of existing personnel.

10. John Czerwinski, Plumbers and Steamfitters, commented that Delaware should ensure data is collected to demonstrate 40% completion of programs.

At the public hearing held August 2, 1999 the following members of the public addressed Council:



11. Edward Capadanno, Executive Director of ABC, is seeking clarification of the term "on site visits" which was provided. He also wanted clarification of the "reciprocity" memoranda of understanding with other states. None currently exist. The ABC supports the changes.

12. Stan Klein, Local 313 JATC, commented that the process has taken two years and has been frustrating. The goal is to safeguard apprentices and the process should move forward. He had comments about "registration" and recommended removing the language "other written documentation". He also commented on Sec. 106.3(I) changes. He thought the rules contained changes that may help solve problems that exist today.

The Council received and hereby incorporates the following correspondence:

1. A letter dated June 9, 1997, from Stanley R. Klein proposing definition of Apprentice<sup>®</sup> and Full-time<sup>®</sup>.

2. A letter from Joseph Seller Jr., Training Coordinator Sheet Metal Workers- Joint Apprenticeship and Training Fund, dated June 18, 1997, proposing a definition for Apprentice<sup>®</sup>.

3. A letter dated June 24, 1997, from William J. McCloskey, President of Delaware Building Trades Council and President of Ironworkers Local 451, supporting the inclusion of a Full-time<sup>®</sup> definition in the rules.

4. A letter dated February 25, 1998, from Ralph G. Degli Obizzi, Jr., Executive Vice President of Ralph G. Degli Obizzi and Sons, Inc., expressing concern about sick and personal days in the full-time definition.

5. A letter dated March 10, 1998, from Karen Peterson indicating concern about the definition of Full-time<sup>®</sup> and the difference in the trade and prevailing wage job classification descriptions.

## II. RECOMMENDED FINDINGS OF FACT BASED ON THE SUMMARY OF EVIDENCE AND INFORMATION:

Council recommends that the Secretary of Labor find that the Rules and Regulation should be amended to ensure a clear understanding of the rights and obligations arising from the apprenticeship relationship. The language for certificate approval in Rule 106.2(Q) should be clarified to include the "Department of Labor" as the source of documentation. The equal opportunity languages in Sec. 106.5 should include "disability" as a class. The Council finds that the definition of Apprentice<sup>®</sup> should ensure that all hours worked by the apprentice should be credited to the wage progression increments. However, defining Full-time<sup>®</sup> by the number of hours required to be provided by the sponsor is unrealistic, particularly in some trades and could discourage sponsors from offering programs. In addition, ambiguity could create problems with enforcement.

## III. RECOMMENDED DECISION

Having considered the proposed rules and the evidence and information received, a majority of a quorum of the Council on Apprenticeship and Training recommends that the Secretary of Labor adopt the changes to the Rules and Regulations attached hereto as Exhibit AA<sup>®</sup> to update and clarify the Rules and Regulations to achieve the policy declared in 19 Del. C. Section 201.

### Council on Apprenticeship & Training

Eugene Battaglia, Chairman  
James T. Clothier  
Paul Cherry  
D. Robert Buccini  
Bonnie Embry  
Edward J. Brady  
Lewis Atkinson

## V. ORDER AND EFFECTIVE DATE

The Findings of Fact made by the Council on Apprenticeship and Training are hereby adopted. Pursuant to the Powers and duties of the Department of Labor under 19 Del. C. Section 202, the changes to the Rules and Regulations attached hereto as Exhibit AA<sup>®</sup> are hereby adopted to take effect ten (10) days following publication in the Delaware Register of Regulations.

SO ORDERED this 30th day of September, 1999.

### DEPARTMENT OF LABOR

Lisa L. Blunt-Bradley  
Secretary of Labor

## Index

Section Number	Section
106.1	Purpose and Scope Declaration of Policy
106.2	Definitions
106.3	Eligibility and Procedure for State Registration
106.4	Criteria For Apprenticeable Occupations
106.5	Standards of Apprenticeship
106.6	Apprenticeship Agreement
106.9 7	Complaints
106.8	Related Instruction Requirements
106.9 7	Deregistration of State Registered Program
106.9 10	Hearing
106.40 11	Reinstatement of Program Registration
106.41 12	Program Registration Denial
106.42-13	Amendment to the Regulations In This Part

**PURPOSE AND SCOPE**

(A) Section 204, Chapter 2, Title 19, Delaware Code authorizes and directs the Department of Labor to formulate regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

(B) The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

(C) These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor  
Office of Labor Law Enforcement  
4425 North Market Street  
Wilmington, DE 19802  
(302) 761-8200

**DECLARATION OF POLICY**

It is declared to be the policy of this State to:

(A) encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State agencies and in cooperation with other states and the federal government;

(B) provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

(C) aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

(D) contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

**SEC. 106.2 DEFINITIONS**

As used in this part:

(A) ~~"ADMINISTRATOR" refers to the Administrator of the Apprenticeship and Training Section for the State Department of Labor.~~

"ADMINISTRATOR" refers to the Administrator of the Office of Apprenticeship and Training for the State

Department of Labor.

(B) "AGREEMENT" refers to a written agreement between an Apprentice and either his/her employer or an Apprenticeship Committee acting as agent for the Employer which contains the terms and conditions of the employment and training of the Apprentice.

(C) "APPRENTICE" refers to a person at least sixteen years of age who is engaged ~~"FULL TIME"~~ in learning a recognized skilled trade through actual work experience under the supervision of a Journeypersons. This person must enter into a written Apprenticeship Indenture Agreement with a registered apprenticeship sponsor. The training must be supplemented with properly coordinated studies of related technical instruction. All hours worked by a registered apprentice, while in the employ of the apprentice's sponsor, shall be considered apprenticeship hours to be counted toward wage progression increments and completion of his/her on-the-job training hours as set forth in the Apprenticeship Indenture Agreement. "FULL TIME" refers to a position which is employed a minimum of forty (40) hours per week, eight (8) hours per day in the classifications as stated in the Apprenticeship Agreement under which the Apprentice is Registered. ~~At no time shall the Apprentice be employed at a job classification other than those to which the Apprentice is Registered.~~

(D) "APPRENTICESHIP STANDARDS" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, are set forth in their company's policies.

(E) "BAT" refers to the U.S. Department of Labor, Bureau of Apprenticeship and Training.

(F) "CANCELLATION" refers to the deregistration of a Program or the Termination of an Agreement.

(G) "COMMITTEE" refers to those persons designated by the Sponsor to act on its behalf in the administration of the Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

(H) "COUNCIL" refers to the ~~{State's Governor's Advisory}~~ Council On Apprenticeship and Training.

(I) "DELAWARE RESIDENT CONTRACTOR" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, Delaware Code, [section 2501(3)] "Resident Contractor".

(J) "DIRECTOR" refers to the Director of the Division of Employment and Training.

(K) "DIVISION" refers to the Division of Employment and Training, Department of Labor, state of Delaware.

(L) "EMPLOYER" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

(M) "JOURNEYPERSON" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

(N) "ON-SITE VISIT" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Employment and Training to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

(O) "PROGRAM" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

(P) "REGISTRANT OR SPONSOR" refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware Resident Contractor" or hold and maintain a "Delaware Resident Business License". The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts. To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

(Q) "REGISTRATION" refers to the acceptance and recording of an Apprenticeship Program by the Delaware

Department of Labor, Office of Apprenticeship and Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written ~~indicia~~ documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship and Training, as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

(R) "RELATED INSTRUCTION" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

(S) "SECRETARY" refers to the Secretary of Labor.

(T) "STATE" refers to the state of Delaware

(U) "SUPERVISORY INSPECTION" shall mean the same as "ON SITE VISIT".

#### SEC. 106.3 ELIGIBILITY AND PROCEDURE FOR STATE REGISTRATION

(A) No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in SEC. 106.4 herein.

(B) Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Employment and Training. Such registration shall be effected by filing copies of each Agreement with the State. Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

(C) The State must be properly notified through the proper office Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

(D) Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

(E) Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as an amendment to such standards.

(F) The request for registration and all documents and data required by this chapter shall be submitted in triplicate. Individual Agreements shall be submitted to the State

Apprenticeship and Training Office for Registration no later than thirty (30) calendar days after the trainee has started work in the registered Program. Agreements submitted after said time shall be considered a violation of the rules and regulations and will not be honored.

(G) Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

(H) Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

(I) ~~A Program may be Registered~~ Sponsor may register Programs in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on-the-job and related study must begin within twelve (12) months for ~~in~~ each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

(J) Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

(K) Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

(L) Each Sponsor shall be so routinely examined, by the Office of Apprenticeship and Training, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

(M) The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar

days of such occurrence.

(N) The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

(O) It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/or Related Training.

#### SEC.106.4 CRITERIA FOR APPRENTICEABLE OCCUPATIONS

An APPRENTICEABLE occupation is a skilled trade which possesses all of the following characteristics:

(A) It is customarily learned in a practical way through training and work on the job.

(B) It is clearly identified and commonly recognized throughout the industry, or recognized with a positive view towards changing technology or approved by the Delaware Department of Labor, Office of Apprenticeship & Training.

(C) It involves manual, technical or mechanical skills and knowledge which require a minimum of two thousand (2,000) hours of on-the-job training, not including the time spent in Related Instruction.

(D) It customarily requires Related Instruction to supplement the on-the-job training.

(E) It involves the development of skills sufficiently broad enough to be applicable in similar occupations throughout the industry, rather than a restricted application to the products or services of any one company.

#### SEC. 106.5 STANDARDS OF APPRENTICESHIP

The following standards are prescribed for a Program.

(A) The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

(B) The standards must contain provisions concerning the following:

(1) The employment and training of the Apprentice in a skilled occupation;

(2) an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

(3) the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry

practice;

(4) an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;

(5) provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship & Training;

(6) a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyman's hourly wage;

(7) Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

- 1) 1 to 7 year programs
- 2) starting pay must be at least minimum wage
- 3) final period must be at least 85%

1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 85%

2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 51%
3rd	1,000 hours: 63%
4th	1,000 hours: 85%

3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 48%
3rd	1,000 hours: 57%
4th	1,000 hours: 65%
5th	1,000 hours: 74%
6th	1,000 hours: 85%

4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 46%
3rd	1,000 hours: 53%
4th	1,000 hours: 59%
5th	1,000 hours: 65%
6th	1,000 hours: 71%
7th	1,000 hours: 78%
8th	1,000 hours: 85%

5 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 45%

3rd	1,000 hours: 50%
4th	1,000 hours: 55%
5th	1,000 hours: 60%
6th	1,000 hours: 65%
7th	1,000 hours: 70%
8th	1,000 hours: 74%
9th	1,000 hours: 79%
10th	1,000 hours: 85%

6 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 44%
3rd	1,000 hours: 48%
4th	1,000 hours: 52%
5th	1,000 hours: 56%
6th	1,000 hours: 60%
7th	1,000 hours: 64%
8th	1,000 hours: 68%
9th	1,000 hours: 72%
10th	1,000 hours: 76%
11th	1,000 hours: 81%
12th	1,000 hours: 85%

7 YEAR [OR] 10,000 HOUR APPRENTICESHIP PROGRAM:

1st	1,000 hours: 40%
2nd	1,000 hours: 43%
3rd	1,000 hours: 47%
4th	1,000 hours: 50%
5th	1,000 hours: 54%
6th	1,000 hours: 57%
7th	1,000 hours: 61%
8th	1,000 hours: 64%
9th	1,000 hours: 68%
10th	1,000 hours: 71%
11th	1,000 hours: 74%
12th	1,000 hours: 78%
13th	1,000 hours: 81%
14th	1,000 hours: 85%

(8) that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

(9) That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.

In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage

increment without the written consent of the Administrator;

(10) That the established Journeyperson's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeypersons shall be receiving wages at least in the amount set for Journeypersons in their individual program standards, or are qualified to perform as Journey persons and must be paid at least the minimum journeyperson rate;

(11) that the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyperson wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

(C) The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

(D) The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements. The ratio of Apprentices to Journeypersons shall be one Apprentice to each five (5) Journeypersons employed by the prospective Sponsor. More restrictive ratios will be granted upon request. More liberal ratios may be granted only after the requesting Sponsor has demonstrated that the number of Apprentices to be trained shall be in relation to:

- (1) the needs of the plant and/or trade in the community with consideration for growth and expansion;
- (2) the facilities and personnel available for training are adequate; and
- (3) a reasonable opportunity that employment of skilled workers on completion exists.

The following ratios will be recognized as standard for the trades of:

	Apprentice up to	Journeyperson
Carpenter	1	5
Plumber/Pipefitter	1	5
Sheet Metal Worker	1	4
Insulation Worker	1	4
Electrician	1	3

If a "collective bargaining agreement" exists and stipulates a ratio of Apprentices to Journeypersons, it shall prevail. Provided the Bargaining Ratio is not lower than the State standard.

(E) At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs with fewer than five (5) Apprentices shall not be required to

comply with this part.

(F) A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

(G) Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

(H) The required minimum qualifications for persons entering an Apprentice Program as defined in Section 106.2(C) must be met.

(I) Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

(J) Advance standing or credit up to ~~one quarter~~ 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in any state or federally registered program.

(K) Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.

(L) These Standards shall contain a statement of assurance of qualified training personnel.

(M) There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

(N) These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

(O) There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

(P) There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements and causes therefore.

(Q) There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

(R) There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices

during such period for corrective action. ~~unless other acceptable procedures are provided for in a collective bargaining agreement.~~

(S) There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

(T) There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

(U) There will be provisions for a participating Employer's Agreement.

(V) There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

(W) All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

(X) Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by [an] individual state and the state of Delaware.

#### SEC. 106.6 APPRENTICESHIP AGREEMENT

The Apprenticeship Agreement shall contain:

(A) the names and signatures of the contracting parties (Apprentice and the program Sponsor or Employer), and the signature of a parent or guardian if the Apprentice is a minor;

(B) the date of birth of the Apprentice;

(C) the name and address of the program Sponsor and the Registrant;

(D) the Apprentice's social security number;

(E) a statement of the trade or craft which the Apprentice is to be taught, and the beginning date and term (duration) of apprenticeship;

(F) the number of hours to be spent by the Apprentice in work on the job;

(G) the number of hours to be spent in Related and Supplemental Instruction is recommended to be not less than one hundred forty-four (144) hours per year;

(H) provisions relating to a specific period of probation during which the Apprenticeship Agreement may be terminated by either party to the Agreement upon written notice to the Registrant;

(I) provisions that, after the probationary period, the Agreement may be suspended, canceled or terminated for

good cause, with due notice to the Apprentice and a reasonable opportunity for corrective action, and with written notice to the Apprentice and the Registrant of the final action taken;

(J) a reference incorporating, as part of the Agreement, the standards of the Apprenticeship Program as it exists on the date of the Agreement or as it may be amended during the period of the Agreement;

(K) a statement that the Apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination based on race, color, religion, national origin, marital status, or sex, or disability;

(L) a statement that, if an Employer is unable to fulfill his obligation under his Agreement, the Agreement may, with consent of the Apprentice and Committee, if one exists, be transferred to another Employer under a Registered Program with written notice of the transfer to the Registrant, and with full credit to the Apprentice for satisfactory time and training earned;

(M) the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions;

(N) a statement setting forth a schedule of work processes in the trade or industry in which the Apprentice is to be trained and the approximate time to be spent at each process;

(O) a statement of the graduated scale of wages to be paid the Apprentice and whether or not the required school time shall be compensated;

(P) a statement that in the event the Registration of the Program has been Canceled or revoked, the Apprentice will be notified within fifteen (15) days of the event.

#### SEC. 106.8 COMPLAINTS

(A) Any controversy or difference arising under an Agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by an Apprentice or his/her authorized representative to the State Registration Agency for review. Matters covered by a collective bargaining agreement, however, shall be submitted and processed in accordance with the procedures therein provided.

(B) The complaint shall be in writing, signed by the complainant, and submitted by the Apprentice or his/her authorized representative within sixty (60) days of receipt of local decision. The complaint shall set forth the specific problem, including all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

**SEC. 106.8 RELATED INSTRUCTION REQUIREMENT**

(A) Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

(1) A registered Apprentice who misses seven (7) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

(2) An absence will result when an Apprentice either arrives late or leaves early three (3) times. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

(3) Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

(4) If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

(5) Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value will require the Apprentice to produce a document detailing satisfactory participation and completion.

**SEC. 106.7 2 DEREGISTRATION BY STATE**

(A) Deregistration proceedings ~~may~~ shall be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;

(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;

(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);

(D) It is declared to be the policy of this State to:

(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and

(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and regulations;

(3) deregister a Program either upon the voluntary action of the Registrant by a request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;

(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:

(a) the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.

(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation and the effective date that such Cancellation automatically deprives the Apprentice of his/her individual Registration.

(E) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three ~~or more~~ violations in any given twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council.

The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., that the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.

(F) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating the deficiencies found and the remedy required and shall state that the Program will be deregistered for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an additional thirty (30) day period.

(G) If the required action is not taken within the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:

(1) this notice is sent pursuant to this subsection;

(2) that certain deficiencies were called to the Registrant's attention and remedial action requested;

(3) based upon the stated cause and failure of remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;



(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.

(H) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual Registration.

#### SEC. 106.9 ~~10~~ HEARINGS ON DEREGISTRATIONS

(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her ~~assignee~~ designee, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:

- (1) the time and place of the hearing;
- (2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;
- (3) a statement of the cause for which the Program was deregistered and the purpose of the hearing.

(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.

(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record ~~before him~~ and an investigation, if necessary. The Administrator shall notify, in writing, all parties of ~~this the~~ decision. If any party is dissatisfied or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and ~~said~~ Council shall make a determination on the basis of the records and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.

#### SEC. 106.40 ~~11~~ REINSTATEMENT OF PROGRAM REGISTRATION

A Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appropriate. After such presentation, the Council shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

#### SEC. 106.4 ~~12~~ PROGRAM REGISTRATION DENIAL

Any proposed Sponsor may, within fifteen (15) working days, request a hearing before the Apprenticeship and Training Council. If the proposed Sponsor requests a hearing, the Administrator shall advise the chairman of the Council, who shall convene the Council, for a hearing for the purpose of making a determination on the basis of the record and proposed findings of the Office of Apprenticeship & Training. This determination shall be subject to review and approval by the Secretary, whose decision shall be final and binding.

#### SEC. 106.42 ~~13~~ AMENDMENT TO THE REGULATIONS IN THIS PART

The Secretary may, at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

**Secretary's Order No. 99-W-0055**  
**Total Maximum Daily Load (TMDL) for Zinc**  
**in the White Clay Creek**  
**Date of Issuance: October 14, 1999**  
**Effective Date of TMDL: November 11, 1999**

#### I. BACKGROUND

A public hearing was held on September 7, 1999, to gather public comments on a proposed Total Maximum Daily Load ("TMDL") for zinc in the White Clay Creek. Section 303(d) of the federal Clean Water Act ("CWA") requires each state to develop TMDLs for waters within their jurisdiction which are not meeting applicable water quality standards, even after the application of technology-based pollution controls.

Water quality monitoring performed by the Delaware Department of Natural Resources and Environmental Control ("DNREC") and others has shown that the concentration of zinc in the White Clay Creek, downstream of Paper Mill Road in Newark, Delaware, occasionally does not meet applicable water quality standards for zinc.

Although zinc is an essential element for both aquatic life and humans, excessive concentrations can adversely affect aquatic life and human health. Zinc concentrations in the White Clay Creek are not high enough to adversely affect people who drink water that is withdrawn from the White Clay Creek. Zinc concentrations do, however, occasionally exceed water quality criteria designed to protect fish and other aquatic life from the toxic affects of the metal.

As set forth in Section 303(d) of the CWA, a TMDL is composed of three components, including Waste Load Allocations ("WLA") for point source discharges, Load Allocations ("LA") for nonpoint sources, and a Margin of Safety ("MOS") to account for uncertainties in the relationship between pollutant loading and in-stream concentrations. In the case of the White Clay Creek below Paper Mill Road, there are no permitted point source discharges of zinc. Therefore, there is no need to allocate wasteloads to point sources. Zinc does, however, enter the White Clay Creek from nonpoint sources. Nonpoint sources that deliver zinc to the White Clay Creek include background loading from the area of the White Clay Creek watershed upstream of Paper Mill Road, as well as storm-related inputs of contaminated soils and sediments originating from the old National Vulcanized Fiber ("NVF") Company facility in Newark, Delaware.

A TMDL was developed by the DNREC which allocates among the above-noted nonpoint sources, while reserving a small percentage (~ 2%) of the TMDL as a Margin of Safety. The actual numerical value of the TMDL, 6.73 pounds of zinc per day, was computed by multiplying the critical 1Q10 streamflow by the applicable acute aquatic life criterion. Of the 6.73 pounds per day, 3.5 pounds per day were allocated to the NVF Newark facility, 3.07 pounds per day were allocated to the upstream background, and 0.16 pounds per day were allocated to the Margin of Safety.

At the September 7, 1999 hearing, staff from DNREC submitted four (4) exhibits for the official record. Those exhibits included the proposed TMDL regulation as it appeared in the August 1, 1999 Delaware Register of Regulations; various public notices that announced the public hearing and solicited input from the public; a Technical Background and Basis Document prepared by DNREC that details the basis of the TMDL; and a Biological Assessment Report prepared by DNREC staff regarding the White Clay Creek. One member of the public provided oral and written comments at the time of the hearing, and one additional person submitted written comments for the record prior to the deadline of September 14, 1999. The Department has prepared a Response Document that lists each comment received along with the Department's response. The four DNREC exhibits, the comments received by the public, the written transcript of the hearing, and the Response Document constitutes the full and official record for this matter. The Hearing Officer prepared his Report and

Recommendations dated October 14, 1999, which are also expressly incorporated herein.

## II. FINDINGS AND CONCLUSIONS

### A. Findings

1. Proper notice of the proposed action and public hearing was provided as required by law.

2. Water quality monitoring has shown that the concentration of zinc in the White Clay Creek, downstream from Paper Mill Road in Newark, Delaware, occasionally exceeds applicable water quality standards for zinc.

3. Section 303(d) of the CWA requires States to develop a TMDL for waterbodies and pollutants for which existing pollution controls are not sufficient to attain applicable water quality standards.

4. The zinc TMDL of 6.73 pounds per day is designed to implement the applicable water quality standard for zinc in the White Clay Creek from Paper Mill Road in Newark, Delaware to the Creek mouth near Stanton, Delaware.

5. As required by Section 303(d) of the CWA, TMDLs must include a total allowable load composed of 3 parts: a wasteload allocation for point sources, a load allocation for nonpoint sources, and a margin of safety to account for uncertainties between zinc loading and resulting in-stream zinc concentrations. The zinc TMDL for the White Clay Creek includes all of these required elements except a wasteload allocation for point sources. Since there are currently no permitted point source discharges that add zinc to the affected waterbody, the wasteload allocation for permitted point source discharges is implicitly zero. The TMDL includes a load allocation of 3.5 pounds per day for zinc released from the NVF Newark facility and a load allocation of 3.07 pounds per day for zinc originating from background sources located upstream from Paper Mill Road. In addition to the 3.5 pound and 3.07 pound load allocations, the TMDL also includes a margin of safety of 0.16 pounds per day of zinc. This small margin of safety is justified due to the infrequent exceedances of zinc criteria that are currently occurring. In addition, an environmental cleanup underway at the NVF Newark facility is expected to further reduce criteria exceedances.

6. The TMDL considers and accounts for critical environmental conditions which occur in this waterbody. The TMDL identifies the critical environmental conditions as times of low stream flows, coupled with sporadic stormwater runoff of zinc from the NVF Newark facility and associated sediment transport in the Creek. Furthermore, the TMDL considers seasonal environmental variations through the use of critical low flow conditions in the stream, which occur during summer to fall drought periods.

7. In light of the few criteria exceedances currently occurring in the White Clay Creek, and in

consideration of the cleanup underway at the NVF Newark facility, there is a reasonable expectation that this TMDL can be met.

8. As a part of this TMDL, the DNREC has committed to develop a Pollution Control Strategy in concert with affected parties and the interested public to guide implementation of the White Clay Creek zinc TMDL.

9. Public comments on the proposed TMDL were supportive overall. The few concerns that were raised were not sufficient to prompt changes to the proposed TMDL.

10. Failure of DNREC to adopt the proposed TMDL by December 31, 1999 will result in EPA action to establish a Federal TMDL for zinc this waterbody by December 31, 2000.

#### B. Conclusion

Based on the record established in this matter, the DNREC has a reasonable basis upon which to adopt the TMDL regulation as proposed at the hearing.

### III. ORDER

In view of the findings and conclusions, it is hereby ordered that the proposed TMDL as set forth in the record be adopted in final form and that the regulatory promulgation process move forward as required by law.

### IV. REASONS

The record in this matter provides a reasonable basis to support the DNREC's proposed TMDL regulation, the adoption of which is necessary to ensure that applicable water quality standards are met in the affected waterbody for zinc.

Nicholas A. DiPasquale  
Secretary

#### **Total Maximum Daily Load (TMDL) for Zinc in the White Clay Creek, Delaware**

Article 1. The TMDL for zinc in the White Clay Creek shall be 6.73 pounds per day, measured as total zinc.

Article 2. The mass loading of zinc to the White Clay Creek from the NVF, Newark facility property (i.e.,  $LA_{NVF}$ ) shall not exceed 3.5 pounds of zinc per day, measured as total zinc.

Article 3. The load allocation of zinc from the area upstream of Paper Mill Road (i.e.,  $LA_{up}$ ) shall be capped at 3.07 pounds per day, measured as total zinc.

Article 4. The margin of safety (MOS) for the TMDL listed in Article 1 has been set at 0.16 pounds of zinc per day. This margin of safety (approximately 2% of the TMDL) reflects the modest data set and the highly conservative approach used to establish the TMDL, while at the same time accounting for uncertainties associated with sediment processes in the Creek.

Article 5. DNREC has determined with a reasonable degree of scientific certainty that water quality standards for zinc will be met in the White Clay Creek once the mass loading requirements of Articles 1 through 3 are met.

Article 6. Implementation of this TMDL Regulation shall be achieved through the development of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with affected parties, the interested public, and the Department's ongoing Whole Basin Management Program. The manner in which the 3.5 pounds per day that is noted in Article 2 above is achieved shall be one particular area of focus as part of the Pollution Control Strategy. The Pollution Control Strategy will also consider how monitoring will be conducted to verify compliance with the TMDL.

#### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 103 (7 Del.C. 103)

#### **Amendment to Shellfish Regulation No. S-55-A Order No. 99-F-0053**

#### Summary of Evidence and Information

29 Del.C. §10113 stipulates that certain regulations are exempted from the procedural requirements of 7 Del.C. Chapter 29, and may be adopted informally. Specifically, amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulation, may be adopted informally.

House Bill 206 was enacted in 1998 which, in effect, changed the effective annual dates for all shellfish licenses and permits from May 1 through April 30 to January 1 through December 31, (7 Del.C. §1916). Shellfish Regulation S-55-A, Horseshoe Crab Dredge Permit Lottery, section (a) stipulates the annual date for accepting applications (April 30) and the subsequent date (May 1) to hold a lottery to select five individuals for horseshoe crab dredge permits. These dates need to be changed to December 31 and January 1 respectfully, to be consistent with the basic law.

**Findings of Fact**

The Division of Fish and Wildlife, Department of Natural Resources and Environmental Control is not authorized to issue more than five horseshoe crab dredge permits during any one calendar year (7 Del.C. §2703). Accordingly, Shellfish Regulation No. S-55-A was adopted to establish an annual lottery to draw five individuals from a list of qualified applicants on the date corresponding to the date a horseshoe crab dredge permit becomes effective. The effective dates for a horseshoe crab dredge permit have been changed in the basic law from May 1 through April 30 to January 1 through December 31.

**Conclusion**

Shellfish Regulation No. S-55-A, HORSESHOE CRAB DREDGE PERMIT LOTTERY, should be amended to change the date for accepting horseshoe crab dredge permit applications from April 30 to December 31 and to change the date for the lottery drawing from May 1 to January 1.

**Order**

It is hereby ordered, this 5<sup>th</sup> day of October, 1999 that an amendment to Shellfish Regulation No. S-55-A, copies of which are attached hereto, are adopted pursuant to § 1902, 7 Del. C., to make Shellfish Regulation No.S-55-A consistent with basic law. (7 Del.C. §1916) This order shall become effective on December 1, 1999.

Nicholas A. DiPasquale  
Secretary

Be it adopted by the Department of Natural Resources and Environmental Control the following amendment to Shellfish Regulation No. S-55-A.

Section 1. Amend Shellfish Regulation No. S-55-A (a), HORSESHOE CRAB DREDGE PERMIT LOTTERY by striking the words "April 30" as they appear therein and substitute the words "December 31" in lieu thereof.

Further amend Shellfish Regulation No. S-55-A (a) by striking the words "May 1" as they appear therein and substitute the words "January 1: in lieu thereof.

Section 2. This amendment to Shellfish Regulation S-55-A (a) shall become effective on December 1, 1999.

**S-55-A HORSESHOE CRAB DREDGE PERMIT LOTTERY**

(a) The Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge

permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual commercial horseshoe crab permit shall be accepted by the Department until 4:30 PM ~~April 30~~ December 31 or 4:30 PM on the Friday preceding if ~~April 30~~ December 31 is a Saturday or Sunday. If an annual lottery is necessary it shall be conducted at 1:00 PM on ~~May 1~~ January 1 or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware."

(b) To be eligible an applicant for a horseshoe crab dredge permit shall be the current owner and operator of an oyster vessel licensed to transplant oysters from natural oyster beds according to procedures in Shellfish Regulation No. S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS."

Note: This regulation was adopted by order of the Secretary on March 4, 1997, as "S-55." However with the adoption of a second S-55 ("Horseshoe Crab Dredging Restrictions") on February 11, 1998, this regulation has been designated as "S-55-A."

---

**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING  
COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. 121(b))

Order Adopting Amended Regulations  
5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004,  
5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003,  
5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001,  
5.2906(e).0002, 5.2906(e).0003 AND 5.3404/3409.0001

IT IS HEREBY ORDERED, this 14th day of October, 1999, that amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 are adopted as regulations of the State Bank Commissioner. Copies of amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 are attached hereto and incorporated herein by reference. Amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002,

5.2906(e).0003 and 5.3404/3409.0001 supersede previous regulations 5.2102(b)/2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2905(e)/122(b).0001, 5.2905(e).0002, 5.2906(e).0003 and 5.3404.0001, respectively. The effective date of amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 is November 12, 1999. Amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 were published in the September 1, 1999 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on September 8, 1999 and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before October 4, 1999, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on October 4, 1999 in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware 19901.

2. One written comment was received on October 1, 1999 from Christopher V. DiPietro, Executive Director of the Mid-Atlantic Financial Services Association, Inc. In this letter, Mr. DiPietro requested that the proposed amendment to regulation 5.2218/2231.0003 be changed to provide that a written explanation submitted to the applicant at the time of execution of the note, or mailed to the applicant prior to execution of the note, would satisfy the requirement that a copy of the regulation be provided to the applicant at the

time when the application was made, in cases when the application was made telephonically.

3. A public hearing was held on October 4, 1999 at 10:00 a.m. regarding the proposed amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001. The State Bank Commissioner, the Deputy Bank Commissioner for Intergovernmental Affairs, the Administrator for Non-Depository Institutions and Compliance, and the Compliance Officer for the Office of the State Bank Commissioner, and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Administrator for Non-Depository Institutions and Compliance summarized the proposed amended regulations for the record. Mr. DiPietro's October 1, 1999 letter was marked as an exhibit to the hearing transcript. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided not to adopt the change suggested in Mr. DiPietro's October 1, 1999 letter to proposed amended regulation 5.2218/2231.0003. With the exception of a nonsubstantive change to proposed amended regulation 5.2218/2231.0003, by adding a reference to "facilities" to section 3(c)(v) of that regulation, the State Bank Commissioner decided to adopt amended regulations 5.2112.0001, 5.2111(a).0002, 5.2115.0003, 5.2113.0004, 5.2111(b).0005, 5.2213.0002, 5.2218/2231.0003, 5.2210(e).0005, 5.2318.0001, 5.2906(e)/122(b).0001, 5.2906(e).0002, 5.2906(e).0003 and 5.3404/3409.0001 as proposed.

Robert A. Glen  
State Bank Commissioner

**Regulation No.: 5.2112.0001**

**~~Proposed~~ Effective Date: November 12, 1999]**

### MORTGAGE LOAN BROKERS OPERATING REGULATIONS (5 DEL. C. §2112)

1. Application of Chapter

Chapter 21 of Title 5 of the Delaware Code governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the Delaware Code does not apply to the brokering of commercial mortgage loans, including a first or second mortgage on any income producing property that does not fall into the

aforementioned definition.

2. Maintenance of Copies of Applicable Regulations

All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the Delaware Code, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the Delaware Code shall maintain copies of all applicable regulations. These regulations include:

- 5.2112.0001 - Mortgage Loan Brokers Operating Regulations;
- 5.2111(a).0002 - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;
- 5.2115.0003 - Mortgage Loan Brokers Itemized Schedule of Charges;
- 5.2113.0004 - Mortgage Loan Brokers Minimum Disclosure Requirements;
- 5.2111(b).0005 - Report of Delaware Loan Volume;
- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the Delaware Code and this regulation.

3. Fees for Examination and Supervisory Assessment

Mortgage Loan Broker licensees are subject to examination pursuant to §2110 of Title 5 of the Delaware Code. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the Delaware Code.. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the Delaware Code. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

4. Representations at Mortgage Loan Closings

At no time shall a mortgage loan close in the name of

the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

~~[Document Control No.:]~~

---

Regulation No.: 5.2111(a).0002

~~[Proposed Effective Date: November 12, 1999]~~

**MORTGAGE LOAN BROKERS  
MINIMUM REQUIREMENTS FOR CONTENT OF  
BOOKS AND RECORDS  
(5 DEL. C. §2111(a))**

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation No. 5.141.0001.NC Retention of Financial Institution Records.

1. Applicant Register - This record shall show the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of broker's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2. Individual Records of Applicant - A file of all documents, invoices and/or other obligations for each applicant shall be maintained and shall include the following:

- (a) Name and address of the applicant;
- (b) Identifying number;
- (c) Date of application/broker's agreement;
- (d) A copy of the mortgage loan broker agreement containing original signature(s) of applicant(s), or a certified copy thereof;
- (e) A copy of all invoices or other evidence of expenses incurred in connection with the mortgage loan including, but not limited to, the property appraisal, title certificate, and credit report;

(f) A copy of all receipts provided to the applicant(s) for amounts paid to the broker;

(g) A record of all fees collected by the broker in accordance with Regulation No. 5.2115.0003 Mortgage Loan Broker Regulations Itemized Schedule of Charges;

(h) Name of lender;

(i) Copy of the commitment;

(j) Date and amount of broker fee collected; and

(k) Evidence of any refunds and an explanation of the refunds.

3. Record of Litigation - All files on applicants who initiate litigation against the licensee or who are sued by the licensee, shall be maintained in a separate litigation section of the files and shall include the following:

(a) All original paper or a certified copy thereof;

(b) Date and terms of judgment.

4. Advertising - Copies of all printed or other advertising materials circulated by the mortgage loan broker.

~~[Document Control No.:]~~

Regulation No. 5.2115.0003

[Proposed Effective Date: November 12, 1999]

**MORTGAGE LOAN BROKER REGULATIONS  
ITEMIZED SCHEDULE OF CHARGES  
(5 DEL. C., §2115)**

1. Notification - Every licensee shall make available for review to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer prior to application shall satisfy this requirement for internet transactions.

2. Fees Permissible for Collection Prior to Receipt of a Written Commitment - In connection with the application for credit and on behalf of the borrower, the following fees subject to the limitations enumerated herein may be collected prior to the receipt of a written commitment from a bona fide lender:

(a) Property appraisal fees shall be limited to the amount paid to a third-party for such appraisal and shall be limited to those amounts that are customary and reasonable;

(b) Credit report fees shall be limited to the actual cost

of the report, the amount of which was paid to a third-party. Such amounts shall be customary and reasonable;

(c) Title examination fees and/or title insurance shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(d) Returned check charges may be assessed to consumers, provided the amounts of such charges are customary and reasonable for checks that are returned unpaid;

(e) Other bona fide third-party fees actually and reasonably paid or incurred on behalf of the borrower. Such other fees shall not be incurred without the express permission of the borrower and shall be limited to amounts actually paid or incurred. Such amounts shall be customary and reasonable;

(f) An application fee may be imposed in lieu of the fees itemized above (excluding item d) provided the amount of such application fee reasonably reflects the anticipated amounts of all appropriate fees and amounts collected in excess of such actual costs shall be refunded. Those fees which reasonably exceed the anticipated amounts shall be payable by the borrower.

(g) Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.

3. Fees Permissible for Collection Upon or After Receipt of a Written Commitment or Pre-Approval and Prior to Consummation of the Mortgage Loan

(a) Fees associated with loan commitments, if such fees are required by the lender upon receipt of a written commitment, provided the fees are payable to the lender.

(b) Fees that the lender may require in advance of a loan closing, provided, however, that such fees are paid directly to the lender or third-party provider.

(c) This section shall not prohibit the collection of fees otherwise permitted under item 2 of this regulation, if such fees are collected after receipt of a written commitment or pre-approval.

4. Collection of Fees in the Name of the Mortgage Loan Broker - Notwithstanding the limitations under items 2(g) and 3, a mortgage loan broker may collect the fees authorized in items 2(g) and 3 of this regulation, in the mortgage loan broker's own name, if required by the lender.

5. Fees for Mortgage Loan Broker Services - A fee may be collected from a bona fide lender, in accordance with the mortgage loan broker agreement, at closing or following the rescissionary period (for loans which qualify for rescission under the Federal Truth-in-Lending Act). In no event shall the aggregate points charged to the borrower exceed ten percent of the principal amount of the loan. Such point

limitation shall apply to points assessed by the lender on the lender's behalf, together with points charged by the lender on behalf of any other party to the transaction. The total compensation paid to a mortgage loan broker shall reasonably reflect the value of the goods and services provided.

~~[Document Control No.:~~

---

Regulation No.: 5.2113.0004

~~[Proposed Effective Date: November 12, 1999]~~

**MORTGAGE LOAN BROKERS  
MINIMUM DISCLOSURE REQUIREMENTS  
(5 DEL. C., §2113)**

1. Advertising

When a licensed mortgage loan broker advertises with respect to a mortgage loan, the advertisement shall clearly and conspicuously state that the broker is a licensed mortgage loan broker.

2. Written Agreement

The mortgage loan broker shall enter into a separate, signed, written agreement with the potential borrower, independent of the loan agreement. The terms of such agreement shall be disclosed to the potential borrower before the payment of any nonrefundable fee. A copy of the agreement shall be provided to the prospective borrower at the time he signs the agreement. The agreement shall contain, at a minimum:

- (a) The name of the mortgage loan broker;
- (b) The name of the prospective borrower;
- (c) The date of the agreement and the period for which it shall remain in effect;
- (d) A statement that the mortgage loan broker is not the credit provider;
- (e) A complete description of the services the mortgage loan broker undertakes to perform for the prospective borrower;
- (f) A specific statement of the circumstances under which the mortgage loan broker will be entitled to obtain or retain consideration from the party with whom the mortgage loan broker contracts;
- (g) An estimate of the costs of the broker's services which may be expressed as a dollar amount or range together with the maximum cost of services. Such maximum cost shall be expressed as follows: "In no event shall the cost of these services exceed \_\_\_\_\_." Such amounts shall include all compensation paid to the broker whether paid directly or indirectly;
- (h) A statement as to which fees are refundable and

nonrefundable and under what circumstances a fee may be refundable; and

(i) A statement that the borrower may be entitled to the refund of certain monies paid to the mortgage loan broker if he exercises his right to rescind under the Federal Truth-in-Lending Act.

~~[Document Control No.:~~

---

Regulation No.: 5.2111(b).0005

~~[Proposed Effective Date: November 12, 1999]~~

**REPORT OF DELAWARE LOAN VOLUME  
(CHAPTER 21, TITLE 5 OF THE DELAWARE CODE)**

This report shall be completed by all institutions licensed under Chapter 21, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year. **In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.**

Licensees with multiple licensed locations, whose loan files are serviced at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location.

- 1. Name of Licensee:  
\_\_\_\_\_
- 2. Is this a consolidated report? Yes \_\_\_\_\_ No \_\_\_\_\_
- 3. License No.: \_\_\_\_\_ (If consolidated, list all license numbers): \_\_\_\_\_  
\_\_\_\_\_
- 4. List the address where the loan files are maintained:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 5. Examination contact person's name, title, phone number and fax number:  
\_\_\_\_\_  
\_\_\_\_\_
- 6. Please report the Delaware business conducted (number of loans) in each of the following categories:



Loans Placed, per agreement: \_\_\_\_\_  
 Total Dollar Value: \_\_\_\_\_  
 Loans Rescinded: \_\_\_\_\_  
 Applications Denied: \_\_\_\_\_

7. The period for which you are currently reporting is from \_\_\_\_\_ to \_\_\_\_\_.

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature	Title
_____	_____	_____
	Printed Name	Phone Number

~~[Document Control No.:~~

**Regulation No.: 5.2213.0002**

**[Proposed Effective Date: November 12, 1999]**

**LICENSED LENDERS MINIMUM REQUIREMENTS  
 FOR CONTENT OF BOOKS AND RECORDS  
 (5 DEL. C. §2213)**

Each licensed office shall establish and maintain the following books and records, including automated and electronic record processing systems, on a current basis, either at the office of the licensed lender, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations that accommodate individual accounting systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested. The following records shall be maintained in accordance with the time periods provided in Regulation No. 5.141.0001.NC Retention of Financial Institutions Records:

1. Loan Register - This record shall show the account number, date of loan, name of borrower, type of security, contract rate or annual percentage rate, and amount of loan. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed and, if known, date application was denied and reason for denial.

2. Individual Accounts with Borrowers - A record or ledger sheet shall be kept for each borrower and shall include the following:

(a) Name and address of the borrower;

- (b) Loan number;  
 (c) Face amount of loan;  
 (d) Date of loan;  
 (e) Rate of interest charges and the amounts of all charges;  
 (f) Terms of repayment;  
 (g) Type of security;  
 (h) Where and to whom hypothecated;  
 (i) Names of endorsers, co-makers, guarantors, or sureties;  
 (j) The actual date of receipt of payment of principal and charges; and,  
 (k) Name of assignee of mortgage note.

In addition, the record or ledger sheet shall be kept in such manner as to show at once the balance due on principal.

3. File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a mortgage of record has been appropriately removed.

4. Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be recorded. Details of disbursements to, or for the account of, borrowers shall be itemized.

5. Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossessions, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- (a) Loan number, original amount of loan and unpaid balance;  
 (b) Type of security foreclosed, attached, replevined, repossessed, or surrendered;  
 (c) Date and terms of settlement of account or, if after judgment, prejudgment balance, current balance, unearned charges credited to borrower's account, and legal costs;  
 (d) Evidence that the terms of sale were fair to the borrower, if the security was sold after repossession; and,  
 (e) Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the branch office and should reflect a correct current balance.

6. Credit Insurance Claims Register - A credit insurance claims register or file that is a record of all claims submitted by borrowers to the insurer shall disclose the following:

(a) Date of claim

- (b) Amount of claim;
- (c) Date and amount of payment by insurer or the date of rejection and the reason therefor;
- (d) Borrower's name;
- (e) Loan number;
- (f) Reason for claim (i.e. death, illness, etc.);
- (g) Proof of death;
- (h) A copy of the check(s) issued by, or other record of disbursement by, the insurance company in payment of life, accident, health, or accident and health benefits; and,
- (i) A copy of the check(s) issued by, or other record of disbursement by, the insurance company to rebate unearned insurance premiums, which result from pre-payment of the loan or cancellation of the insurance.

7. In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

~~[Document Control No.:~~

**Regulation No. 5.2218/2231.0003**

**[Proposed Effective Date: November 12, 1999]**

**LICENSED LENDERS REGULATIONS  
ITEMIZED SCHEDULE OF CHARGES  
(5 DEL. C. §§2218 AND 2231)**

1. Notification - Every licensee shall furnish to every applicant, a copy of this regulation at the time when such application is made. Posting of this regulation in the office of the licensee in a place both prominent and easily visible to all potential applicants shall satisfy this requirement. An explanation as to the contents and limitations contained herein shall satisfy this requirement when transactions occur telephonically. An informational screen containing these limitations with an affirmative acknowledgement by the consumer, prior to application, shall satisfy this requirement for internet transactions.

2. Interest

(a) A lender may charge and collect interest in respect to a revolving credit plan or closed end loan at such daily, weekly, monthly, annual, or other periodic percentage rate or rates as the agreement governing the plan or loan provides, or as established in the manner provided in such agreement. Periodic interest may be calculated on a revolving credit plan using any balance computation method provided for in the agreement governing the plan. Periodic interest may be calculated on a closed end loan by way of simple interest or such other method as the agreement governing the loan provides.

(b) If the agreement governing the revolving credit plan or closed end loan so provides, the periodic percentage

rate or rates of interest may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of the outstanding unpaid indebtedness or outstanding unpaid amounts. In the case of revolving credit, such rate shall become applicable on or after the first day of the billing cycle that contains the effective date of such variation. In the case of closed end loan transactions, such rate may be made applicable to all or any part of the outstanding unpaid amounts on and after the effective date of such variation. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the revolving credit plan or closed end loan agreement for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness or outstanding unpaid amounts, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan or agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the revolving credit plan or loan agreement.

3. Additional Fees and Charges; Limitations - If the agreement governing the plan or loan so provides, in addition to, or in lieu of, interest at a periodic percentage rate or rates permitted by Chapter 22, Title 5 of the Delaware Code, the licensee may charge and collect the following fees and charges, subject to the limitations provided below, in respect to revolving credit plans or closed end loans:

(a) Revolving Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges under plans subject to the provisions of Subchapter II, Chapter 22, Title 5 of the Delaware Code:

(i) periodic charges - a daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(ii) transaction charges - a transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(iii) minimum charges - a minimum charge in such amount or amounts as the agreement may provide for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(iv) fees for services rendered or reimbursement of expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the

licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of a plan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing the plan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

(v) overlimit charges - a charge in such amount or amounts as the agreement may provide, for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which the total outstanding indebtedness exceeds the credit limit established under the plan;

(vi) delinquency charges - a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due;

(vii) returned check charges - a returned check charge may be assessed to consumers, in such amount or amounts as the agreement may provide, provided the amount(s) of such charges are customary and reasonable for checks that are returned unpaid;

(viii) termination fees - a charge in such amount or amounts as the agreement may provide to terminate a revolving credit plan;

(ix) charges incurred in connection with real estate secured transactions - in the case of revolving credit secured by real estate such additional charges as outlined in item (3)(c) of this regulation may also be collected within the limitations stated therein.

(b) Closed End Credit - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges for loans subject to the provisions of Subchapter III, Chapter 22, Title 5 of the Delaware Code:

(i) fees for services rendered or reimbursement of

expenses - reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agent in connection with such loan, including without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses. In the event a borrower defaults under the terms of the loan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee;

(ii) deferral charges - a deferral charge may be assessed to a borrower in accordance with an agreement to permit the borrower to defer installment payments of a loan;

(iii) delinquency charges - if the agreement governing the loan so provides, a late or delinquency charge may be imposed upon any outstanding unpaid installment payment or portions thereof under the loan agreement which are in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default;

(iv) returned check charges - if the agreement governing the loan so provides, a returned check charge may be assessed to consumers, for checks that are returned unpaid provided the amount(s) of such charges are customary and reasonable;

(v) charges incurred in connection with real estate secured transactions - in the case of closed end credit secured by real estate such additional charges as outlined in item (3)(c) of this regulation may also be collected within the limitations stated therein.

(c) Real Estate Secured Transactions - with respect to a borrower, a lender may charge, collect, or receive one or more of the following fees and charges subject to the limitations herein, for loans subject to the provisions of Subchapters II (Revolving Credit) and III (Closed End Credit), Chapter 22, Title 5 of the Delaware Code when such loans are secured by real estate:

(i) loan origination points - points charged to

the borrower on the lender's behalf for any purpose other than to reduce the periodic interest rate applicable to the mortgage loan may not exceed 10% of the principal amount of the loan. Such points may be deducted from the gross proceeds of the loan. For purposes of this regulation "gross proceeds" is the amount financed as defined in Federal Reserve Regulation Z;

(ii) loan discount points - points charged to the borrower as a function of rate for the purpose of reducing the periodic interest rate applicable to the mortgage loan. Such points may be deducted from the gross proceeds of the loan;

(iii) property appraisal fees - property appraisal fees shall be limited to the amount paid to a third party for such appraisal and shall be limited to those amounts that are customary and reasonable;

(iv) credit report fees - credit report fees shall be limited to the actual cost of the report if paid to a third party, not an employee of the lender or affiliate. Such amounts shall be customary and reasonable;

(v) mortgage loan broker compensation fees - mortgage loan broker compensation may be deducted from the gross proceeds of the loan. Such amounts shall reasonably reflect the value of the goods, services, and **[facilities]** provided;

(vi) tax certification and service fees - fees for agreements to provide certification of the current tax status of the property as well as fees for ongoing monitoring and notice to the lender of all tax and improvement lien payments as they become due shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(vii) flood hazard certification or determination fees - determination fees may be charged for determining whether the property is or will be located in a special flood hazard area. This fee may also include the cost of life-of-loan monitoring. Such amounts shall be customary and reasonable;

(viii) title abstract/search/examination and title insurance premiums - title insurance and/or cost of a title certificate, search, examination and binder shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable and may, at the borrower's discretion, include owner's coverage in addition to lender's coverage;

(ix) legal fees - legal fees incurred in securing or closing a loan shall be limited to amounts actually paid to an attorney not in the employ of the lender, its parent, or affiliate, and such charges shall not exceed those which are customary and reasonable;

(x) recording/satisfaction fees - recording/satisfaction fees shall be limited to those actually expended by the lender to any governmental authority for protection of interest in collateral tendered. The State Bank Commissioner may approve the payment of alternative fees

for this purpose provided the amount of said fee (payable by the borrower) shall not exceed the amount which would be payable to any governmental authority for protection of interest in collateral tendered;

(xi) property survey fees - property survey fees to obtain a drawing that delineates the exact boundaries of a property, including lot lines and placement of improvements on the property, shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(xii) pest inspection fees - pest inspection fees to cover inspections for termites or other pest infestation on the property shall be limited to those amounts actually expended for such purposes. Such amounts shall be customary and reasonable;

(xiii) fees incidental to loan closing - other fees and charges including but not limited to: odd days interest, hazard and mortgage insurance premiums, escrow reserves, lender's inspection fees, mortgage insurance application fees, assumption fees, underwriting fees, document preparation fees, settlement or closing fees, notary fees, funding fees, fees for lead based paint or other inspections and overnight mail fees may be charged and such amounts shall be customary and reasonable;

(xiv) prepayment penalties - a charge in such amount or amounts as the agreement so provides imposed in connection with the payoff and termination of a revolving credit plan or closed end loan secured by real estate;

(xv) notwithstanding the provisions of item (3)(c) of this regulation, Licensed Lenders who are making mortgage loans pursuant to the rules, regulations, guidelines and/or loan forms established by the State of Delaware or federal governmental or quasi-governmental entity (including, without limitation: the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration, the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) shall be permitted to charge and collect any fees, charges or sums prescribed to be charged and collected in connection with a mortgage loan originated pursuant to a lending program conducted or supervised by any such entity.

**[Document Control No.:]**

---

Regulation No.: 5.2210(e).0005

[Proposed Effective Date: November 12, 1999]

REPORT OF DELAWARE LOAN VOLUME (CHAPTER 22, TITLE 5 OF THE DELAWARE CODE)

This report shall be completed by all institutions licensed under Chapter 22, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year. In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.

Licenses with multiple licensed locations, whose loan files are maintained at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location.

- 1. Name of Licensee:
2. Is this a consolidated report? Yes No
3. License No.: (If consolidated, list all license numbers):
4. List the address where the loan files are maintained:
5. Examination contact person's name, title, phone number and fax number:
6. Please report the Delaware business conducted (number of loans) in each of the following categories:
Loans Executed:
Total Dollar Value:
Loans Paid Off at Maturity:
Loans Paid Off Prior to Maturity:
Applications Denied:
Loans in Litigation:
Credit Life Insurance Claims:

Credit A & H Insurance Claims:

7. The period for which you are currently reporting is from to.

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

Date Signature Title
Printed Name Phone Number

[Document Control No.:

Regulation No.: 5.2318.0001

[Proposed Effective Date: November 12, 1999]

REPORT OF DELAWARE SALE OF CHECKS, DRAFTS AND MONEY ORDERS VOLUME (CHAPTER 23, TITLE 5 OF THE DELAWARE CODE)

This report shall be completed by all institutions licensed under Chapter 23, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year.

In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.

- 1. Name of Licensee:
2. License No.:
3. List the address where the books and records are maintained:
4. Examination contact person's name, title, phone number and fax number:
5. Please report the Delaware business conducted in each of the following categories:

Number of travelers checks/cheques sales: \_\_\_\_\_  
Total dollar value: \_\_\_\_\_  
Number of money order sales: \_\_\_\_\_  
Total dollar value: \_\_\_\_\_  
Number of times funds were transmitted: \_\_\_\_\_  
Total dollar value of funds transmitted: \_\_\_\_\_

6. The period for which you are currently reporting is from \_\_\_\_\_ to \_\_\_\_\_.

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature	Title
_____	_____	_____
	Printed Name	Phone Number

~~[Document Control No.:~~

**Regulation No.: 5.2906(e)/122(b).0001**

**[Proposed Effective Date: November 12, 1999]**

**MOTOR VEHICLE SALES FINANCE COMPANIES  
MINIMUM REQUIREMENTS FOR CONTENT OF  
BOOKS AND RECORDS  
(5 DEL. C. §§122(b) and 2906(e))**

Each licensed office shall establish and maintain the following books and records, on a current basis, either at the office of the licensed broker, or, at a suitable location available within a reasonable time period, upon request. Written approval may be granted for variations which accommodate individual accounting systems, including automated and electronic record processing systems, provided the objectives of this regulation are fulfilled. Requests for such approvals must be in writing and shall provide adequate information about the system as to ensure that the minimum record requirements are satisfied and provide the required data on a current and readily available basis to examiners, when requested.

(1) Retail Installment Contract Applicant Register - This shall be a record showing the name of the applicant, identifying file number, date application was filed, name of lender, date of commitment, amount of lender's fee, and date fee was paid. In the case of an applicant denied credit, the register shall contain the name of the applicant, identification number, date application was filed, date application was denied and reason for denial.

(2) Individual Accounts with Borrowers - A record shall be kept for each borrower and shall include the following:

- (a) Name and address of the borrower;
- (b) Loan number;
- (c) Date of loan;
- (d) Total amount of loan;
- (e) Total sale price;
- (f) Rate of interest charges and the amounts of all charges;
- (g) Terms of repayment;
- (h) Description of motor vehicle;
- (i) Where and to whom hypothecated;
- (j) Names of endorsers, comakers, guarantors, or sureties;
- (k) The actual date of receipt of payment of principal and charges; and,
- (l) Name of assignee or purchaser of retail installment contract.

(3) File of All Original Paper - (or copies thereof). All obligations and disclosure forms signed by the borrower and taken in connection with loans made shall bear the loan number, shall be maintained in one file, and shall be made available to the examiners when requested. Such file, if applicable, shall include evidence that a retained title or lien was released within the time period prescribed in Regulation No. 5.2906(e).0002, Item (4).

(4) Daily Transaction Record - All transactions involving either the receipt or disbursement of any amount whatsoever shall be entered in this record. Details of disbursements to, or for, the account of borrowers shall be itemized.

(5) Record of Loans in Litigation and Repossessions - A record of all loans in litigation, repossessions, or voluntary surrenders shall be maintained either on the borrower's account record or a litigation record. If a composite record of such loans is not kept, the loans shall be maintained in a separate litigation and repossession file. The litigation and repossession record shall disclose the following information:

- (a) Loan number, original amount of loan and unpaid balance;
- (b) Description of motor vehicle, attached, replevined, repossessed, or surrendered;
- (c) Date and terms of settlement of account or, if after judgement, the date and amount of judgement, prejudgement balance, current balance, unearned charges credited to borrower's account, and legal costs;
- (d) Evidence of the terms of sale if the security was sold after repossession, such evidence including copies of all bids or other offers received together with the purchaser's name and address, price, date of sale and cash or financing terms.
- (e) Evidence that notification of the time and place of sale was sent to the borrower;
- (f) Evidence of amount paid, if any, to third party

repossessors; and,

(g) Records of litigation accounts handled by attorneys or corporate collection centers shall be maintained in the existing (principal or branch) office and should reflect a correct current balance.

(6) Credit Insurance Claims Register - A credit insurance claims register or file which is a record of all claims submitted by borrowers to the insurer shall disclose the following:

- (a) Date of claim;
- (b) Amount of claim;
- (c) Date and amount of payment by insurer or the date of rejection and the reason therefor;
- (d) Borrower's name;
- (e) Loan number;
- (f) Reason for claim (i.e. death, illness, etc.);
- (g) Proof of death;
- (h) A copy of the check(s) issued by the insurance company in payment of life, accident, health, or accident and health benefits; and,

(i) A copy of the check(s) issued by the insurance company, or other evidence of credit, which result from prepayment of the loan or cancellation of the insurance.

(7) In the event a loan is sold and no servicing performed, only those items listed in item 6 available prior to such sale shall be required.

~~[Document Control No.:~~

**Regulation No.: 5.2906(e).0002**

**[Proposed Effective Date: November 12, 1999]**

## MOTOR VEHICLE SALES FINANCE COMPANIES OPERATING REGULATIONS (5 DEL. C. §2906(e))

### 1. Application of Chapter

#### (a) Lease Contracts

(i) A lease contract is governed by Chapter 29 of Title 5 of the Delaware Code, when all of the following exist:

(1) The lessee contracts to pay a sum substantially equivalent or in excess of the value of the motor vehicle for the use of the motor vehicle over the lease term.

(2) The lessee is bound to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract.

(3) The value for which the motor vehicle is to be sold at the end of the lease term is not payable in a single installment (Cash Sale).

(ii) A lease contract is not governed by Chapter 29 of Title 5 of the Delaware Code, when any one of the contract provisions described in 1.(a) (i), (1), (2), and (3) is absent.

(b) For the purposes of Chapter 29 of Title 5 of the Delaware Code, all 'motor vehicles' which meet the definition contained in 5 Del. C. §2901(1), regardless of whether the intended use is commercial or personal, fall under the auspices of this chapter.

(c) If a trade-in is involved in a credit sale transaction and the amount of the existing lien exceeds the value of the trade-in, inclusion of the negative equity financing is permissible under Chapter 29, Title 5 of the Delaware Code. In a negative equity trade-in transaction where no cash payment is involved licensees must disclose a zero down payment and under no circumstances should the negative equity be disclosed as a negative number as the consumer's down payment. Any negative equity to be financed under the retail installment sale contract should be disclosed under the provisions of §2907(e)(4) and not §2907(e)(2) of Title 5 of the Delaware Code.

### 2. Maintenance of Operating Regulations for Motor Vehicle Sales Finance Companies

All licensees shall conduct business in compliance with Chapter 29 of Title 5 of the Delaware Code, and any regulations issued thereunder. Each office licensed under Chapter 29 of Title 5 of the Delaware Code shall possess copies of all applicable regulations. These regulations include:

- 5.2906(e)/122(b).0001 - Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records;
- 5.2906(e).0002 - Motor Vehicle Sales Finance Companies Operating Regulations;
- 5.2906(e).0003. - Report of Delaware Loan Volume Motor Vehicle Installment Contracts;
- 5.2111/2210/2906.0006 - Report of Delaware Assets; and
- 5.141.0001.NC - Retention of Financial Institution Records.

The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulations shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both 5 Del. C. §2906(e) and this regulation.

### 3. Examination and Supervisory Assessment Fees

Motor Vehicle Sales Finance Companies licensees shall be subject to examination pursuant to §122 of Title 5 of the

Delaware Code. The cost of such examinations shall be assessed to the licensee in accordance with 5 Del. C. §127(a). A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for the examination. In addition, the Commissioner shall assess annually each licensee a supervisory assessment fee, due and payable on August 1 of each year, as provided in 5 Del. C. §127(b). Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the Delaware Code.

#### 4. Security Interest

A licensee shall take the necessary action(s), to release or satisfy a retained title or a lien created by a retail installment contract, within thirty days of the date the debt secured by the motor vehicle is satisfied or performed.

#### 5. Credit Life, Health, and Accident Insurance

(a) A licensee may request, but not require, an individual borrower to be insured under a life, health, accident, health and accident, or other credit or other permissible insurance policy, whether group or individual.

(b) Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware, as well as rules and regulations of the Insurance Commissioner, as may from time to time be prescribed.

(c) Every lender offering credit life and health insurance, whose charges do not conform to those authorized in the Insurance Commissioner's Regulation No. 5, shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate, as well as approval by the Insurance Commissioner of the rate.

(d) Credit life insurance refunds shall be calculated as of the date of death.

(e) Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers, regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.

(f) The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation No. 5, and any subsequent applicable regulations promulgated, to each licensee.

#### 6. Other Insurance

(a) Any licensee may require a proof of insurance coverage for any loan secured by a motor vehicle.

(b) A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may,

upon written approval, permit. No such insurance may be offered, after January 1, 1992, without the State Bank Commissioner's written approval. Those insurances offered prior to January 1, 1992 shall not require written approval, provided such insurances were reported to the State Bank Commissioner before February 10, 1993.

#### 7. Borrower-Signed Authorization for Insurance

Any insurance authorized by these Rules and Regulations must be supported by a specific request signed by the borrower. This request shall be attached to, or made a part of, the application documents.

~~[Document Control No.:~~

---

Regulation No.: 5.2906(e).0003

~~[Proposed Effective Date: November 12, 1999]~~

### REPORT OF DELAWARE LOAN VOLUME MOTOR VEHICLE INSTALLMENT CONTRACTS (CHAPTER 29, TITLE 5 OF THE DELAWARE CODE)

This report shall be completed by all institutions licensed under Chapter 29, Title 5 of the Delaware Code and submitted to the Office of the State Bank Commissioner twice each year. The first report is due on or before July 31 and must contain figures from January 1 through June 30 of the current year. The second report is due on or before January 31 and must contain figures from January 1 through December 31 of the previous year. **In the event that you fail to provide this information in the period requested, you will be in violation of this regulation. Additionally, an examination will be scheduled, and staff allocated, without respect to the volume of your Delaware business. This may result in additional examination costs to you.**

Licensees with multiple licensed locations, whose retail installment contract files are maintained at a consolidated, centralized location, may file a consolidated report. Otherwise, a separate report must be submitted for each licensed location.

1. Name of Licensee: \_\_\_\_\_

2. Is this a consolidated report? Yes \_\_\_\_\_ No \_\_\_\_\_

3. License No.: \_\_\_\_\_ (If consolidated, list all license numbers): \_\_\_\_\_

4. List the address where the retail installment contract files are maintained:

\_\_\_\_\_  
\_\_\_\_\_



5. Examination contact person's name, title, phone number and fax number:

\_\_\_\_\_

6. Please report the Delaware business conducted (number of contracts) in each of the following categories:

- Contracts Executed: \_\_\_\_\_
- Total Dollar Value: \_\_\_\_\_
- Contracts Paid Off at Maturity: \_\_\_\_\_
- Contracts Paid Off Prior to Maturity: \_\_\_\_\_
- Applications Denied: \_\_\_\_\_
- Contracts in Litigation: \_\_\_\_\_
- Credit Life Insurance Claims: \_\_\_\_\_
- Credit A & H Insurance Claims: \_\_\_\_\_

7. The period for which you are currently reporting is from \_\_\_\_\_ to \_\_\_\_\_.

I, the undersigned officer, hereby certify that this report is true and correct to the best of my knowledge and belief.

_____	_____	_____
Date	Signature	Title
_____	_____	_____
	Printed Name	Phone Number

~~[Document Control No.:~~  
\_\_\_\_\_

Regulation No.: 5.3404/3409.0001  
~~[Proposed Effective Date: November 12, 1999]~~

**PRENEED FUNERAL CONTRACTS REGULATIONS  
GOVERNING REVOCABLE AND IRREVOCABLE  
TRUST AGREEMENTS  
(5 DEL. C. §§3404 and 3409)**

1. Annual Statements

At least once, annually, a licensee shall mail or deliver, to each party for whom such licensee holds a preneed funeral contract, a statement containing, at a minimum, the following information:

- (a) the previous balance in the trust account or the beginning balance for the statement period;
- (b) the number and amounts of payments received for the statement period;
- (c) the amount of accrued interest for the statement period;
- (d) the "ending" or total account balance for the statement period; and
- (e) the name and address of the financial institutions where the trust deposit is held.

2. Disclosure Requirements for the Irrevocable Trust Document

The trust document establishing the irrevocable trust permitted by Section 3404 of Title 5 of the Delaware Code shall contain, at a minimum, the following mandatory provisions:

- (a) A provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary;
- (b) A provision for the disposition of trust funds to an alternate trustee upon discontinuation of business or inability to provide goods or services by the original trustee in accordance with the terms of the trust or a provision for the transfer of trust funds, to a new trustee, at the consumer's election;
- (c) A provision that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary;
- (d) A provision that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary;
- (e) A provision that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000;
- (f) A provision which shall state "In no event shall the principal amount of the trust exceed \$10,000 plus interest."

~~[Document Control No.:~~  
\_\_\_\_\_

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SIXTY-SEVEN**

TO: HEADS OF ALL STATE DEPARTMENTS,  
AGENCIES AND AUTHORITIES, AND ALL  
POLITICAL SUBDIVISIONS AND  
GOVERNMENTAL UNITS OF THE STATE OF  
DELAWARE.

RE: PROCLAMATION OF STATE OF  
EMERGENCY DUE TO HURRICANE

WHEREAS, the National Weather Service and the Delaware Emergency Management Agency predict that a severe storm ("Hurricane Floyd") will hit the State of Delaware beginning Thursday, September 16, 1999;

WHEREAS, Hurricane Floyd has skirted the East Coast beginning with the northcentral coast of Florida and has caused significant flooding, damage to property and has forced the evacuation of nearly 2 million people;

WHEREAS, as of Tuesday, September 14, 1999, Hurricane Floyd was a Category 4 storm, the second most powerful storm of its kind;

WHEREAS, current predictions indicate that Hurricane Floyd will likely bring 5 to 10 inches of rain and up to 80 mph winds to Delaware, beginning as early as 10:00 a.m. on Thursday, September 16, 1999; and

WHEREAS, Hurricane Floyd threatens major destruction and damage to properties throughout the state;

WHEREAS, Hurricane Floyd may cause power outages and dangerous road conditions and thereby threaten public safety;

WHEREAS, as a result of this crisis and pursuant to the authority vested in the Governor by virtue of Chapter 3 1, Title 20 of the Delaware Code, as amended, it is necessary to promulgate reasonable orders to protect the public health, safety and welfare, and to bring the emergency situation under control within the acknowledged limitations of the powers of one governor of one state.

NOW THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and proclaim a State of Emergency for the entire State of Delaware, effective 8:00 a.m. on Thursday, September 16, 1999. By virtue of this State of Emergency, I direct and authorize that:

1. All resources of the State of Delaware shall be made available to assist in the preparation, response and clean-up activities as necessary in those areas affected by the storm.

2. The Delaware National Guard is hereby activated to

assist in storm related response efforts to help alleviate the emergency situation.

3. All campgrounds statewide are subject to mandatory evacuation.

4. All schools are strongly encouraged to cancel classes for Thursday, September 16, 1999.

5. Residents in low-lying areas are urged to evacuate.

6. Delaware residents are urged to stay informed via media reports, prepare for possible power outages, remove or otherwise secure outside objects that could become projectiles in high winds and ensure an ample supply of food and water.

7. The Delaware Emergency Management Agency activate the State Emergency Operations Plan and the Relief and Recovery Plan, and cooperate with the President of the United States, the heads of the armed forces, the civil defense agencies of the United States, and the Federal Emergency Management Agency in making application, if necessary, for relief and assistance for those towns and communities adversely affected by the Hurricane Floyd pursuant to the Relief and Recovery Plan of the State of Delaware and any potentially applicable federal disaster or emergency relief laws, including, but not limited to, the Stafford Disaster Relief and Emergency Assistance Act.

Approved this 15th day of September, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

---

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SIXTY-EIGHT**

TO: HEADS OF ALL STATE DEPARTMENTS,  
AGENCIES AND AUTHORITIES, AND ALL  
POLITICAL SUBDIVISIONS AND  
GOVERNMENTAL UNITS OF THE STATE OF  
DELAWARE.

RE: TERMINATION OF DROUGHT WARNING  
AND OTHER RELATED ACTION.

WHEREAS, due to improved water supply, I issued Executive Order Number Sixty-Six on September 8, 1999, terminating the previously declared drought emergency for northern New Castle County and declaring a drought warning;

WHEREAS, although the improved water supply alleviated the drought conditions to some extent, voluntary conservation measures were still necessary and therefore a drought warning urging continued conservation measures was ordered;

WHEREAS, September 16, 1999, Delaware received record rainfalls with six (6) to ten (10) inches of precipitation as a result of Hurricane Floyd;

WHEREAS, as a result of Hurricane Floyd, stream flows may now have reached record levels; and

WHEREAS, water supply conditions have now improved to the point that a drought warning is no longer necessary.

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. This Executive Order shall terminate the drought warning previously declared for the State of Delaware pursuant to Executive Order Number Sixty-Six.

2. All state agencies are encouraged to employ best management practices for water conservation in agency facilities.

3. All residents statewide are encouraged to practice sound water conservation techniques in the interest of avoiding unnecessary water usage.

4. The citizens of Delaware are to be commended for the significant reductions in water demand achieved during the drought emergency -- such efforts were critical to the effective management of water supplies.

5. The provisions of this order shall be effective Friday, September 17, 1999 at 10:30 a.m.

Approved this 17th day of September, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SIXTY-NINE**

TO: HEADS OF ALL STATE DEPARTMENTS,  
AGENCIES AND AUTHORITIES, AND ALL  
POLITICAL SUBDIVISIONS AND  
GOVERNMENTAL UNITS OF THE STATE OF  
DELAWARE.

RE: AMENDMENT TO EXECUTIVE ORDER  
NUMBER TWENTY-SEVEN, AS AMENDED  
BY EXECUTIVE ORDER NUMBER FIFTY-SIX  
REGARDING THE CREATION OF THE  
VIOLENCE AGAINST WOMEN ACT  
IMPLEMENTATION COMMITTEE

WHEREAS, the Violence Against Women Act Implementation Committee was created by Executive Order in 1995; and

WHEREAS, under that Executive Order, the Implementation Committee is charged with a number of responsibilities related to the implementation of the Violence Against Women Act, including making recommendations for the distribution of funding available under that federal legislation; and

WHEREAS, one of the committee's members recently resigned.

NOW, THEREFORE, I, THOMAS R. CARPER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. Executive Order Number Twenty-Seven, as amended by Executive Order Number Fifty-Six is amended by striking the text of paragraph number 3 and inserting in lieu thereof the following:

"The Committee shall be comprised of the following four individuals, representing relevant State efforts to prevent violence against women: the Honorable Vincent J. Poppiti, Chairperson of the Domestic Violence Coordinating Council; the Honorable Patricia M. Blevins, Vice Chairperson of the Domestic Violence Coordinating Council; the Honorable M. Jane Brady, Attorney General of the State of Delaware and member of the Criminal Justice Council; and Jennifer L. Barber, Deputy Legal Counsel, Office of the Governor".

Copies of this amendment to Executive Order Number Twenty-Seven shall be distributed with copies of Executive Order Number Twenty-Seven and Executive Order Number Fifty-Six.

Approved this 13th day of October, 1999.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

---

---

**GOVERNOR'S APPOINTMENTS**

---

669

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Authority on Radiation Protection	Mr. Jacob Beutel Mr. Michael A. Stemmiski	09/21/02 09/21/02
Commission on National and Community Service	Ms. Diane M. Kempfski Ms. Lisa F. Slinkard	10/20/00 10/04/02
Council on Apprenticeship and Training	Mr. Thomas E. Archie	09/23/02
Council on Corrections	Mr. Roger M. Levy	09/23/02
Delaware Bicycle Council	Mr. John D. Baker Mr. Daniel C. Lacombe	09/21/02 09/21/02
Delaware Commission on Veterans Affairs	Mr. Lee R. Davis Mr. Leon S. Stajkowski	10/30/01 09/23/03
Delaware Economic and Financial Advisory Council	Mr. Robert H. Shrouds	Pleasure of the Governor
Delaware Emergency Medical Services Oversight Council	Colonel John L. Cunningham Dr. Glen H. Tinkoff, M. D.	
Delaware Health Fund Advisory Committee	Mr. Thomas S. Grabowski, Sr. Ms. Vivian M. Longo Dr. Calvin T. Wilson	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor
Delaware Health Resources Board	Dr. Wilfred E. Kingsley Mr. Jon C. McDowell Mr. A. Herbert Nehrling, Jr.	09/21/02 09/21/02 09/21/02
Delaware Higher Education Commission	Mr. Benjamin Cabell, Sr.	Pleasure of the Governor
Dover/Kent County Metropolitan Planning Organization	Mr. Horace W. Cook Mr. Donald L. Erhart	09/28/01 09/28/01
Farmland Evaluation Advisory Committee	Dr. John C. Nye	09/14/02
Fire Prevention Commission	Mr. Michael H. Vincent	09/21/05
Governor's Council on Equal Employment Opportunity	Mr. Henry Smith	Pleasure of the Governor
Historical Records Advisory Board	Dr. Barbara E. Benson Mr. Howard P. Lowell Mr. Lewis Purnell	09/21/02 09/21/02 09/21/02

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Judicial Nominating Commission	Mr. Gary F. Dalton	10/04/02
	Ms. Norma Lee Derrickson	10/04/02
	Mr. James Gilliam, Jr.	10/04/02
	Dr. Joan T. Mobley	10/04/02
	Ms. Marlene Samuel	10/04/02
Local Records Commission	The Honorable George C. Wright, Jr.	Pleasure of the Governor
State Board of Pharmacy	Mr. Belasco J. Bossard	07/01/02
	Ms. Laura Yvonne Brown	07/01/02
	Ms. Ruth B. Melvin	07/01/02
State Employees' Charitable Campaign Steering Committee	Dr. Harriet N. Smith-Windsor	Pleasure of the Governor
	Ms. Donna P. Speed	Pleasure of the Governor
Tourism Advisory Board	Ms. Norma Lee Derrickson	09/21/02
	Ms. F. Kay Wheatley	09/21/02
Water Supply Task Force	Mr. J. Wayne Merritt	Pleasure of the Governor
Workforce Investment Board	Mr. Daniel C. Barr	Pleasure of the Governor
	The Honorable Lisa Blunt-Bradley	Pleasure of the Governor
	Mr. Julian H. Booker, Jr.	Pleasure of the Governor
	The Honorable Anne Canby	Pleasure of the Governor
	Ms. Alice Coleman	Pleasure of the Governor
	Dr. William DeLauder	Pleasure of the Governor
	Dr. Lozelle DeLuz	Pleasure of the Governor
	The Honorable Susan Frank	Pleasure of the Governor
	Ms. Theresa Gallagher	Pleasure of the Governor
	Dr. Orlando George, Jr.	Pleasure of the Governor
	Mr. Thomas P. Gordon	Pleasure of the Governor
	Mr. J. Nathan Hill	Pleasure of the Governor

---

---

**GOVERNOR'S APPOINTMENTS**

---

671

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Workforce Investment Board	The Honorable James Hutchison	Pleasure of the Governor
	Mr. Julio Juan	Pleasure of the Governor
	The Honorable Vincent Lofink	Pleasure of the Governor
	Dr. Dennis L. Loftus	Pleasure of the Governor
	The Honorable Robert Marshall	Pleasure of the Governor
	The Honorable Darrell Minott	Pleasure of the Governor
	Ms. Sandy Reyes	Pleasure of the Governor
	Mr. Harry J. Sanchez	Pleasure of the Governor
	The Honorable James H. Sills, Jr.	Pleasure of the Governor
	Mr. Doug Smith	Pleasure of the Governor
	Mr. Robert Stickels	Pleasure of the Governor
	The Honorable Gregg C. Sylvester, M. D.	Pleasure of the Governor
	The Honorable Dennis Williams	Pleasure of the Governor
	The Honorable Dallas Winslow	Pleasure of the Governor
	Mr. Kermit B. Wooden	Pleasure of the Governor
Ms. Valerie Woodruff	Pleasure of the Governor	

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION**

**PUBLIC HEARING NOTICE**

The following Boards and Commissions under the Division of Professional Regulation propose to hold a joint public hearing pursuant to 29 **Del.C.** §10111:

- Board of Electrical Examiners
- Real Estate Commission
- Board of Accountancy
- Board of Professional Land Surveyors
- Board of Architects
- Board of Chiropractic
- Board of Cosmetology and Barbering
- Board of Dental Examiners
- Board of Nursing,
- Board of Examiners in Optometry
- Board of Plumbing Examiners
- Examining Board of Physical Therapists
- Board of Podiatry
- Council on Real Estate Appraisers
- Board of Landscape Architecture
- Board of Examiners of Psychologists
- Board of Funeral Services
- Board of Veterinary Medicine
- Board of Examiners of Nursing Home Administrators
- Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
- Board of Clinical Social Work Examiners
- Board of Professional Counselors of Mental Health
- Board of Occupational Therapy Practice
- Board of Massage and Bodywork
- Committee of Dietetics/Nutrition.

The purpose of the hearing is to adopt regulations pertaining to the Voluntary Treatment Option for Chemically Dependent or Impaired Professionals in accordance with 29 **Del.C.** §8807(n). The public may obtain copies of the proposed regulations from the Division of Professional Regulation c/o Denise Spear, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904 (302)739-4522 ext. 202. A public hearing will be held on December 1, 1999 at 1:00 p.m. in conference room A, second floor of the Cannon Building, 861 Silver Lake Blvd., Dover, DE. The Division will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Denise Spear at the above address.

Final date to submit written comments shall be at the above scheduled public hearing.

**BOARD OF COSMETOLOGY & BARBERING**

The Delaware Board of Cosmetology and Barbering proposes to adopt a new regulation, pursuant to 24 **Del.C.** §5106(14) and 29 **Del.C.** Ch. 101. The purpose of the proposed new regulation is to prohibit the use of methyl methacrylate (MMA) in the practice of cosmetology, nail technology and related professions.

A public hearing on the proposed regulation will be held on Monday, November 29, 1999 at 9:30 a.m., in Conference Room A, Second Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested people on the proposed new regulation. Oral comments will be received at the public hearing. Written comments must be submitted by December 1, 1999 and should be directed to the Board at its offices at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467.

Anyone wishing to make oral comments or to obtain a copy of the proposed regulation should contact Sheila Wolfe, Administrative Assistant to the Board, by calling (302) 739-4522 x 218.

**BOARD OF EXAMINERS OF PSYCHOLOGISTS  
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to adopt a new Rule and Regulation. The proposed revision to the rules and regulations will change Section 5 by requiring candidates to submit all application materials to the Board for its review prior to the candidate sitting for the examination.

A public hearing will be held on the proposed Rule and Regulation on December 6, 1999 at 10:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The Board will receive and consider input from interested persons on the proposed rule and regulation, and individuals are urged to submit their comments in writing. Anyone wishing to obtain a copy of the proposed regulation, or to make comments at the public hearing, should contact the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or write to the Delaware Board of Examiners of Psychologists,

P. O. Box 1401, Cannon Building, Suite 203, Dover, DE 19903.

---

## **DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, November 18, 1999 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

---

## **DEPARTMENT OF FINANCE**

The Secretary of Finance proposes five new chapters for the administration of the Education Expense and Property Tax Relief Fund that are summarized below:

1. Adopt chapter 1 to specify the legislative source of the regulatory authority of the Secretary of Finance.
2. Adopt chapter 2 to define more specifically terms (county, school district, plan, residential, school board) referenced in the statute.
3. Adopt chapter 3 to specify the duties of counties to provide in a timely way data necessary for implementing the statutory intent to school districts and the Secretary of Finance.
4. Adopt chapter 4 specifying the reporting forms and requirements of school boards and districts.
5. Adopt chapter 5 to specifying the duties of the Secretary of Finance in supplying forms to school districts, issuing refunds to taxpayers, complying the Internal Revenue Code requirements, and paying the county receivers of taxes for administrative costs.

The Secretary of Finance proposes six new chapters for the administration of the Elderly Property Tax Relief and Education Expense Fund that are summarized below:

1. Adopt chapter 1 to specify the legislative source of the regulatory authority of the Secretary of Finance.
2. Adopt chapter 2 to define more specifically terms (county, school district, plan, principal residence, school board) referenced in the statute.
3. Adopt chapter 3 to specify the duties of counties to provide in a timely way data necessary for implementing the statutory intent to school districts and the Secretary of Finance, to include inserts in mailing of tax bills, and to

verify the primary residency status of persons making application for tax credits from the Fund.

4. Adopt chapter 4 specifying the reporting forms and requirements of school boards and districts.

5. Adopt chapter 5 to specify the duties of the Secretary of Finance in supplying forms to school districts, issuing refunds to taxpayers, complying the Internal Revenue Code requirements, and paying the county receivers of taxes for administrative costs.

6. Adopt chapter 6 to specify the requirement for qualifying persons 65 and over to make application for eligible for the Program and to specify the deadline for application.

The public may obtain copies of the proposed regulations from the Office of the Secretary of Finance, 820 N. French Street, Wilmington, DE 19801 or by calling (302) 577-8987. The Secretary of Finance will accept written public comments from November 1, 1999 to November 30, 1999.

---

## **DIVISION OF REVENUE**

### **DELAWARE STATE LOTTERY OFFICE**

The Delaware Lottery Office proposes amendments to Section 29 of the Regulations on Non-Discrimination of the Basis of Disability to Delaware Lottery Programs. The amendments are summarized below:

1. Amend Rule 29(1) to add a new subsection (l) which adds a definition for the term "technically infeasible."
2. Amend Rule 29(6)(d) concerning the exemption for Landlord refusal. The proposed amendment revises the exemption based on a landlord's refusal to pay for improvements required by the Lottery for the period of the lease.
3. Amend Rule 29(6)(f) to add a new exemption for "technical infeasibility".

Copies of the existing regulations and proposed regulations as amended may be obtained from the Delaware Lottery Office, 1575 McKee Road, Dover, DE 19904-1903; phone (302) 739-5291. The contact person at the Lottery Office is Brian Peters, Deputy Director of Marketing. The Commission will accept written comments from the public from November 1, 1999 through November 30, 1999. A public hearing will be held at the Delaware Lottery Office, 2<sup>nd</sup> Floor Conference Room, 1575 McKee Road, Dover, DE on November 30, 1999 at 3:00 p.m..



**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**

The Delaware Health and Social Services (DHSS) will hold a public hearing to discuss proposed Delaware Regulations for the Conrad State 20 / J-1 Visa Waiver Program. These proposed regulations describe the requirements and procedures for an international medical graduate (IMG) requesting State support for a J-1 visa waiver. DHSS is also proposing a new process for supporting a J-1 visa waiver application. These regulations further enable DHSS, as good stewards of the program, to use this authority to address the issue of physician maldistribution and to help ensure better access to quality health care services for the vulnerable populations of Delaware.

This public hearing will be held on November 30, 1999 at 2:00 PM in Room 309 of the Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling or writing the following:

Ms. Lisa Anderson  
Health Systems Development Branch  
Jesse Cooper Building, P.O. Box 637  
Dover, DE 19903  
Telephone: (302) 739-4787

Anyone wishing to present oral comments at this hearing should contact Ms. Lisa Anderson at (302) 739-4787 by November 23, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by December 2, 1999 to:

Dave Walton, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

**DIVISION OF SOCIAL SERVICES  
PUBLIC NOTICE  
Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility policy manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 1999.

**DIVISION OF SOCIAL SERVICES  
PUBLIC NOTICE  
Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Durable Medical Equipment Provider Manual, the General Policy Manual, Practitioner Provider Manual and the Pharmacy Provider Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by November 30, 1999.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

**Register Notice**

1. Title of the Regulations:  
Regulation 36 - Acid Rain Program
2. Brief Synopsis of the Subject, Substance and Issues:  
Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, authorized the EPA to establish the Acid Rain Program to reduce the adverse health and ecological effects of acid deposition. Delaware's Regulation No. 36 adopted the provisions of the Acid Rain Program by reference, specifically citing the provisions of Parts 72 through 78 of Title 40 of the Code of Federal Regulations, dated July 1, 1995. Subsequent to that date, EPA has amended portions of Parts 72 through 78 of Title 40. The purpose of this rulemaking is to adopt the

provisions of Parts 72 through 78 of Title 40 of the Code of Federal Regulations, dated July 1, 1999. Significant revisions between the July 1, 1995 and July 1, 1999 versions of Parts 72 through 78 include:

Parts 72 and 73 - Improving the operation of the Allowance Tracking System while preserving the Clean Air Act's environmental goals.

Parts 72, 73, 74, 75, 77, and 78 - Improving and streamlining the permitting, excess emissions, and appeal procedure rules in order to reduce the burden on utilities, permitting authorities, and the EPA while still ensuring reduction of sulfur dioxide and nitrogen oxide emissions.

Part 74 - Clarify and revise existing rules to promote participation in the Title IV opt-in program for units that are not otherwise required to participate in the Title IV program.

Part 75 - Clarify existing rules and provide increased implementation flexibility for affected entities. The revisions resolve certain monitoring issues as part of settlement agreements related to the original rulemaking, and addresses new issues raised by experience during the first three years of implementation of the Part 75 monitoring requirements.

Part 76 - Establishes nitrogen oxides (NOx) emissions limitations for certain coal-fired electric utility units and revises NOx emissions limitations for certain other coal-fired electric utility units.

3. Possible Terms of the Agency Action:  
None
4. Statutory Basis or Legal Authority to Act:  
7 Delaware Code, Chapter 60
5. Other Regulations That May Be Affected by the Proposal:  
None
6. Notice of Public Comment:  
A public hearing on this regulation will be held on Tuesday, November 30, 1999, at 6:00 P.M. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.
7. Prepared by: Robert Clausen (302) 323-4542  
October 12, 1999

**DIVISION OF FISH AND WILDLIFE****REGISTER NOTICE**

1. TITLE OF THE REGULATION:  
Shellfish Regulations: Restrictions on Collecting Horseshoe Crabs

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Commercial eel fishermen and their alternates are authorized to collect horseshoe crabs by hand for their own use as bait in eel pots. Individuals with commercial horseshoe crab collecting permits are authorized to collect horseshoe crabs by hand for commercial use or for sale to others. It is proposed that commercial eel fishermen and their alternates not be authorized to assist commercial horseshoe crab collectors.

SFR No. S-58, HORSESHOE CRAB CONTAINMENT AND TRANSPORTATION RESTRICTIONS has been determined to be not enforceable. Therefore, the restrictions on containment and transporting horseshoe crabs are no longer in effect. SFR No-58 is proposed to be stricken.

In order to insure that Delaware complies with the FISHERY MANAGEMENT PLAN FOR HORSESHOE CRABS and not exceed 350,000 horseshoe crabs per year taken from Delaware's beaches, additional restrictions are proposed. Commercial eelers and commercial horseshoe crab collectors are proposed to be not allowed to assist each other or commingle their harvest of horseshoe crabs. Commercial eelers are proposed to be not authorized to collect horseshoe crabs at night. This is consistent with other commercial shellfishermen not being authorized to fish at night. It is also proposed to consider implementing a daily limit on commercial horseshoe crab collectors if not having containment or transportation restrictions leads to higher harvest.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

If Delaware is found to be out of compliance with the Fishery Management Plan for horseshoe crabs by the Atlantic States Marine Fisheries Commission, the fishery for horseshoe crabs may be closed by the Secretary of the U.S. Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. § 2701

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441 prior to 4:30PM. A public hearing on these proposed amendments to shellfish regulations on horseshoe crabs will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Tuesday, December 14, 1999. The record will remain open for comments until 4:30 PM on December 17, 1999.

7. PREPARED BY:  
Charles A. Lesser (302)-739-3441 October 6, 1999

---

**DEPARTMENT OF PUBLIC SAFETY**  
**DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

Please take notice, pursuant to 29 Del. C. Ch. 101 and 4 Del. C. Ch. 3, the Delaware Alcoholic Beverage Control.

A public hearing will be held on the proposed Rule on Thursday, December 16, 1999 at 12:15 p.m. in the Third Floor Conference Room, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801. The purpose of this hearing will be to receive public comments on proposed Rule 76 in order that the Commission may vote to adopt, amend or reject said Rule at its December 16, 1999 meeting. The Commission will receive and consider input in writing from any person regarding proposed Rule 76. Written comments should be submitted to the Commission from November 1, 1999 through November 30, 1999, to Donald J. Bowman, Executive Secretary of the Delaware Alcoholic Beverage Control Commission, at the above address. For copies of the proposed Rule, please contact Joanne Episcopo at the above address or by calling (302) 577-5222. To make comments at the public hearing, please contact Donald J. Bowman, Executive Secretary, at the above address or phone number.

---

**DEPARTMENT OF**  
**TRANSPORTATION**  
**DIVISION OF PLANNING**

The Delaware Department of Transportation (Department) through its Division of Planning is seeking to amend Rules and Regulations for Subdivision Streets with the addition of Mobility Friendly Design Standards.

In the broadest sense and with regard to transportation, Mobility Friendly Design Standards are roadway design standards that promote greater use of transportation facilities and service by bicyclists and pedestrians. Such design standards include, but are not limited to, the addition of sidewalks and landscaped areas, narrower pavement widths, and a requirement for greater connectivity within developments. The addition of these standards will directly support the provisions of the Statewide Long Range Transportation Plan, and county and local the transportation and comprehensive land use plans that seek to promote more traditional development patterns by giving greater emphasis to bicycle and pedestrian access and mobility.

The Department will be accepting comments on the draft Mobility Friendly Design Standards through December 2, 1999. Comments, as well as any questions or requests for additional information should be directed to:

Joseph Cantalupo, Assistant Director of Planning  
The Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone)  
(302) 739-2251 (fax)  
jcantalupo@mail.dot.state.de.us

---

---

---

# SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

## THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public

hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$120.00 PER YEAR**

---

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$120/YEAR

**You will be billed upon receipt of your order.** Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$10 per issue. Back issues are available at \$12 per issue. Subscription fees are non-refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

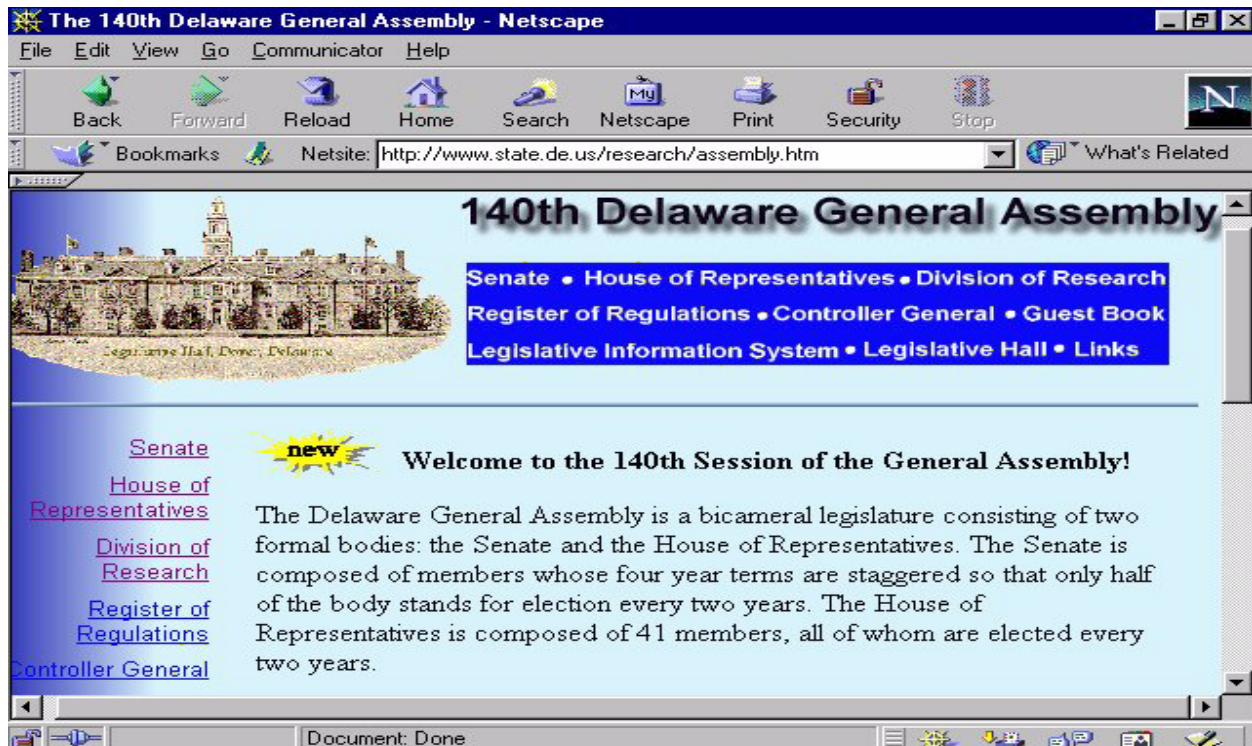
ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

---

---

# Visit The Delaware General Assembly On The Web!



## The General Assembly Website features:

- ! Current legislative information
- ! Information on both the Senate and House of Representatives
- ! Access the Delaware Code
- ! Access to the Delaware Register of Regulations
- ! Information on the legislative process
- ! Various reports and publications

The General Assembly Website is located at:

**<http://www.state.de.us/research/assembly.htm>**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
<b>One copy of all legislation introduced:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
<b>One copy of all legislation signed by the Governor:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$195
<b>One copy of House and Senate calendars:</b>	
<input type="checkbox"/> 1st Session set - - - - -	\$75
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
<b>One copy of all Governor's Advisories:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$25
<b>Daily Legislative Agendas and weekly Standing Committee Notices:</b>	
<input type="checkbox"/> Via Fax - - - - -	\$150

\* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact Ms. Ginny Potts in the Division of Research by dialing, toll-free, (800) 282-8545 (in state). Ms. Potts may also be reached via E-Mail at [vpotts@state.de.us](mailto:vpotts@state.de.us). Please dial (302) 739-4114 if you are calling from outside Delaware.

Please return this order form to Ms. Potts at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.